

**BOULDER CITY COUNCIL MEETING
MUNICIPAL BUILDING, 1777 BROADWAY
Tuesday, March 5, 2013
6 p.m.**

FINAL AGENDA

1. **CALL TO ORDER AND ROLL CALL**
2. **OPEN COMMENT and COUNCIL/STAFF RESPONSE** (limited to 45 min.) Public may address any city business for which a public hearing is not scheduled later in the meeting (this includes the consent agenda and first readings). After all public hearings have taken place, any remaining speakers will be allowed to address council. All speakers are limited to three minutes.
3. **CONSENT AGENDA** (to include first reading of ordinances) Vote to be taken on the motion at this time. (Roll-call vote required)
 - A. Consideration of a **motion to authorize the city manager to sign** a revised version of the **Intergovernmental Agreement between the City of Boulder and Boulder County**, previously authorized on October 2, 2012 to construct and maintain the IBM Connector Trail
 - B. Consideration of a **motion to adopt a resolution approving** and authorizing an application for a **Great Outdoors Colorado School Play Yard Initiative Grant**
4. **POTENTIAL CALL- UP CHECK IN**
Opportunity for Council to indicate possible interest in the call- up of an item listed under agenda Item 8-A1.

ORDER OF BUSINESS

5. **PUBLIC HEARINGS**
 - A. **Proposed ordinances implementing Amendment 64** to the Colorado State Constitution:
 1. Introduction, first reading and consideration of a motion to order published by title only an ordinance amending section 6-14-1, B.R.C. 1981, amending section 6-14-2, B.R.C. 1981, amending section 6-14-5, B.R.C. 1981, amending section 6-14-7, B.R.C. 1981, amending section 6-14-8, B.R.C. 1981, and amending section 6-14-13, B.R.C. 1981 all to implement and comply with the requirements of Amendment 64 to the Colorado State Constitution and setting forth related details
 2. Introduction, first reading and consideration of a motion to order published by title only an ordinance adding a new chapter 5-10, B.R.C. 1981 to implement and comply with the requirements of amendment 64 to the Colorado State Constitution and setting forth related details

3. Introduction, first reading and consideration of a motion to order published by title only an ordinance adding a new chapter 6-16, B.R.C. 1981 and adding a new section 4-20-67 all to implement and comply with the requirements of Amendment 64 to the Colorado State Constitution and setting forth related details

6. **MATTERS FROM THE CITY MANAGER**

None

7. **MATTERS FROM THE CITY ATTORNEY**

None

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL**

A. Potential Call-Ups

1. **Community and Environmental Assessment Process (CEAP) report** recommendations for the **Wonderland Creek Greenways Improvements** from the Diagonal Highway to Winding Trail Drive. IP Date: February 5, 2013. Last opportunity for call-up is March 5, 2013
2. **Extension of Site and Use Review approvals for 1215 Cedar Avenue** (Washington Village II) (LUR2012-00102). IP Date: February 19, 2013. Unanimous approval by the Planning Board. Last opportunity for call-up is March 5, 2013
3. **Vacation of Existing Utility Easement at 3203 Pearl**. IP Date: March 5, 2013. Last Opportunity for call-up is March 5, 2013

B. Discussion of **reduced recreation center fees** for low income children and youth who reside in city enclaves

C. Discussion regarding use or rental of **County Commissioners meeting space** for City Council meetings

9. **PUBLIC COMMENT ON MATTERS** (15 min.) Public comment on any motions made under Matters.

10. **FINAL DECISIONS ON MATTERS** Action on motions made under Matters.

11. **DEBRIEF** (5 Min.) Opportunity for Council to discuss how the previous meeting was conducted

12. **ADJOURNMENT**

This agenda and the meetings can be viewed at www.bouldercolorado.gov / City Council. Meetings are aired live on Municipal Channel 8 and the city's Web site and are re-cablecast at 6 p.m. Wednesdays and 11 a.m. Fridays in the two weeks following a regular council meeting. DVDs may be checked out from the Main Boulder Public Library. Anyone requiring special packet preparation such as Braille, large print, or tape recorded versions may contact the City Clerk's Office at (303) 441-3002, 8 a.m. – 5 p.m. Monday through Friday. ***48 hours notification prior to the meeting or preparation of special materials IS REQUIRED.*** If you need Spanish interpretation or other language-related assistance for this meeting, please call (303) 441-1905 at least three days prior to the meeting. *Si usted necesita interpretación o cualquier otra ayuda con relación al idioma para esta junta, por favor comuníquese al (303) 441-1905 por lo menos 3 días antes de la junta.* Electronic presentations to the city council must be pre-loaded by staff at the time of sign up and will NOT be accepted after 5:30 p.m. at regularly scheduled meetings. Electronic media must come on a prepared USB jump (flash/thumb) drive and no technical support is provided by staff.

This Page Intentionally Left Blank



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 5, 2013

AGENDA TITLE: Consideration of a motion to authorize the city manager to sign a revised version of the intergovernmental agreement between the City of Boulder and Boulder County, previously authorized on October 2, 2012, to construct and maintain the IBM Connector Trail.

PRESENTER/S Open Space and Mountain Parks Department
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Michael D. Patton, Director
James L. Reeder, Division Manager

EXECUTIVE SUMMARY

With a recommendation by the Open Space Board of Trustees (OSBT), the Boulder City Council recently (Oct. 2, 2012) authorized the city manager to sign an intergovernmental agreement (IGA) for the construction of the IBM Connector Trail.

The previously authorized IGA stated that the county would design and construct the connection at its sole cost using a combination of Federal Enhancement Funds and funding from the county's countywide Transportation Sales Tax. However, the latest cost estimates for the trail's construction show a substantial and unanticipated increase in cost. As a result, Boulder County has asked Open Space and Mountain Parks (OSMP) to commit an estimated \$200,000 to construct two bridges on city OSMP property and to cover costs of city wetland mitigation requirements. If OSMP takes responsibility for these three elements of the project, the county is committed to constructing the trail this year. If OSMP does not contribute these additional funds, the project is unlikely to go forward until 2017 or later.

This agreement would mean that OSMP assumes responsibility for the construction of two bridges and wetland mitigation for impacted wetlands on city land and on the easement area. One of these bridges is included in the current project design (over Boulder and Left Hand

Ditch) and the other (over Little Dry Creek) is a request by OSMP staff to replace a planned box culvert crossing with a bridge structure. This action will address only a portion of the revised estimate for construction. The county, however, is looking at redirecting some funds as well as implementing some cost-savings measures on the current trail design in order to remain on schedule to build the connector this year as originally planned.

OSMP has previously paid for the design of the bridge over the Boulder and Left Hand Ditch at a cost of \$6,500. Construction for this bridge is estimated to cost \$70,000. The bridge over Dry Creek has not been designed. The cost to design and build that bridge is estimated to be \$100,000. The required wetland mitigation is estimated at \$30,000. While these estimates total \$200,000, they are only estimates. The OSBT indicated they would be more comfortable recommending a maximum outlay, so they recommended authorizing 'up to \$220,000.'

Completing the construction of this trail in 2013 is still contingent on the Burlington Northern/Santa Fe (BNSF) Railroad replacing its bridge during the first half of 2013. The county is reasonably confident this will occur.

The revised IGA is attached (Attachment A). Other than changes to dates in the previously-authorized IGA, the only revision is contained in Section 2.2.

STAFF RECOMMENDATION

Staff requests consideration of this matter and action in the form of the following motion:

Motion to authorize the city manager to sign a revised intergovernmental agreement between the City of Boulder and Boulder County previously authorized on Oct. 2, 2012, to include an OSMP commitment of up to \$220,000 for the construction of two bridges and wetland mitigation for the IBM Connector Trail, substantially in the form now before the council.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic - Overall economic impacts on the business community are unknown. It is anticipated that this trail will attract more users (pedestrians, bike riders and equestrians from outside the city) once there is a safe crossing of State Highway 119 and the BNSF Railroad. A portion of these users will shop in Boulder during their trip to the area.
- Environmental – Every trail has an environmental impact. However, staff has worked to minimize environmental effects of this trail by minimizing impacts to wetlands to the extent practicable and avoiding sensitive wildlife habitat.
- Social – This trail will connect northern Boulder neighborhoods to the Boulder trail system as a portion of the Longmont-to-Boulder (LOBO) trail. It is also a gap in what has become known as the Trail Around Boulder.

OTHER IMPACTS

- Fiscal – This project is receiving the majority of its funding from Boulder County and federal transportation funds. OSMP is proposing to pay for the design and construction of two bridges and for wetland mitigation. This commitment would be for up to \$220,000.
- Staff time – Under the proposal, the county is responsible for trail construction and highway and railroad crossing structure design development and construction and for project management. OSMP staff time would involve bridge design and construction oversight and wetland mitigation oversight.

BOARD AND COMMISSION FEEDBACK

The Open Space Board of Trustees unanimously recommended this revised IGA at its Feb. 13, 2013 meeting.

PUBLIC COMMENT AND PROCESS

This item is being heard at this public meeting advertised in the *Daily Camera* on Mar. 3, 2013. This item was also heard at the OSBT public meeting held on Feb. 13, 2013 advertised in the *Daily Camera* on Sunday, Feb. 10, 2013. OSMP hosted two public open houses as part of the Community and Environmental Assessment Process (CEAP) – Nov. 8, 2007 and May 5, 2008. Boulder County hosted a public open house on Dec. 17, 2008. The IGA was approved by OSBT on Sept. 12 and City Council on Oct. 2, 2012.

ANALYSIS

Background

The IBM Trail Connector has been a priority for the city and county for over two decades. Last fall the City Council approved an IGA with Boulder County stating that the county would build and pay for the connector trail and the structures needed to complete the trail. The county's cost estimate at the time was \$800,000.

Since that time, the initial design work by the county's consultant has been completed and due to several unexpected design needs the construction cost estimate is now \$1.95 million. This cost is obviously a huge change that represents a major increase in anticipated construction cost for this project. The cost increases are largely due to:

1. Railroad design requirements resulting in the need to replace the existing railroad bridge over Little Dry Creek with a new bridge (this is roughly a \$500,000 increase),
2. Addition of a sump pump system to remove water from the highway underpass,
3. Unanticipated wetlands mitigation design requirements from the city wetlands permitting process and
4. Increased costs from Colorado Department of Transportation's requirements for drain pipe locations.

The county remains committed to building this trail. County staff continues to work with the trail design consultant to reduce the cost of the trail. Even so, they will not have funds needed for the entire project in 2013 and would need to delay the project as much as five years to identify sufficient funding.

As a means of reducing costs, OSMP and county staffs have worked together to identify portions of the project that could be removed from federal funding and assumed by OSMP. The portions of the project for which OSMP will take over responsibility include the two pedestrian/equestrian bridges over Little Dry Creek and the Boulder and Left Hand Ditch and city-required wetland mitigation. The county agrees that by taking these three elements out of the project, they will be able to proceed with construction in 2013 and cover all remaining project costs with the existing funds.

If the revised IGA is approved by council, OSMP will use Capital Improvement Project funds in the 2013 budget to support this project. While these costs were not anticipated, unexpended capital funds from 2012 will be carried over to 2013 and will provide sufficient funding.

ATTACHMENTS:

- A. Intergovernmental Agreement and Grant of Construction Easement (Revised)

INTERGOVERNMENTAL AGREEMENT AND GRANT OF CONSTRUCTION EASEMENT

Construction and Maintenance of IBM Connector Trail

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 2013, by and between the County of Boulder (the “County”), a body corporate and politic, and the City of Boulder (the “City”), a Colorado home rule municipality (collectively “the Parties”).

RECITALS

A. C.R.S. §29-1-201 *et. seq.*, as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties, and the People of the State of Colorado have encouraged such cooperation and contracting through the adoption of Colorado Constitution XIV §18(2).

B. The functions described in this Agreement are lawfully authorized to each of the Parties that perform such functions hereunder, as provided in §30-11-101 *et seq.* and §31-15-101 *et seq.*, C.R.S.

C. The City approved the IBM Trail Connector through its Community and Environmental Assessment Process (CEAP) in August 2008 for the purpose of improving connectivity and safety for bicycle and pedestrian travel between the residential neighborhoods and commercial centers in the Gunbarrel community and the City of Boulder parks and trails system.

D. The County has included the construction of the new multi-use trail connection between the existing Cottontail Trail on the east side of Highway 119 (Diagonal Highway) to the existing Boulder Reservoir trail system on the west side of 63rd Street (the “Trail Connection”) in its list of Regional Trails Priorities, has identified a combination of countywide regional trails funds and federal transportation funds for design and construction of the Trail Connection, and is prepared to advertise the project for construction in 2013.

E. This Trail Connection is included in the Boulder Valley Comprehensive Plan.

F. The Trail Connection will be built upon City Land; land belonging to a private property owner from whom the City owns a trail easement for a multi-use path (the “Easement Area”); CDOT right-of-way (“CDOT Land”) and BNSF right-of-way (“BNSF Land”). City Land, the Easement Area, CDOT Land and BNSF Land are depicted in Exhibit A, attached hereto and incorporated herein by this reference.

G. It is the Parties’ intent that once the entire Trail Connection is constructed, the City will own or have licenses or permits required for use by the public of all sections of the Trail Connection on City Land, the Easement Area, and CDOT Land; and the County will have licenses or permits required for public use of BNSF Land.

H. Construction of the Trail Connection may impact wetlands on City Land, the Easement Area, CDOT Land, and BNSF Land. The wetlands are within the jurisdiction of the City of Boulder and/or the US Army Corp of Engineers. The site chosen for mitigation of wetland impacts on City owned and

jurisdictional wetlands is adjacent to Little Dry Creek on City Land that is managed by the City Department of Open Space and Mountain Parks (OSMP). An off-site mitigation bank has been selected as the preferred form of mitigation of permanent impacts to Corps jurisdictional wetlands with CDOT and BNSF ROW.

In consideration of the mutual covenants and commitments made herein, the Parties agree as follows:

AGREEMENT

1.0 GENERAL

The Recitals set forth above are incorporated herein by reference and made a part of this Agreement.

2.0 CONSTRUCTION AND GRANT OF TEMPORARY CONSTRUCTION EASEMENT

2.1 The Trail Connection shall be designed and constructed by the County, at its sole cost, pursuant to the contract documents for the IBM Connector Trail, Federal Aid Project No. STE C070-036, Project Code No. 17352, Colorado Department of Transportation. The City must review and approve the design and construction plans before any work commences.

2.2 The City shall be responsible for design and construction of bridges that are needed to cross the Boulder and Left Hand Ditch and to cross Little Dry Creek. The City shall also be responsible for wetland mitigation work required for impacted wetlands on City owned and City managed properties.

2.3 The City does hereby grant to the County a temporary nonexclusive license in the Easement Area and in certain portions of the City Land as depicted in Exhibit A as Temporary Access License and Temporary Construction License (the "Temporary License") for its use during the construction of the Trail Connection, as described in the Contract Documents. The Temporary License shall commence no sooner than March 1, 2013 and shall terminate on December 31, 2014 or upon completion of the trail construction, whichever is sooner. The Temporary License area will be rehabilitated to the condition prior to the County's occupancy. The County covenants and agrees to restore said property, landscaping, fences, or other improvements to a level comparable to their original condition. Nothing herein shall permit the County to use any lands owned by the City outside the Temporary License for ingress to and egress from the Temporary License or for any other purpose.

2.4 The County shall obtain all necessary easements and licenses, in its sole name and without reference to the City except as otherwise provided herein, from BNSF in order to construct the Trail Connection on BNSF Land. The County shall obtain all necessary easements and licenses, in the name of the City except as otherwise provided herein from CDOT in order to construct the Trail Connection on CDOT Land. The City will review these easements before they are signed.

2.5 The County intends to hire an independent contractor ("Contractor") to construct the Trail Connection. The County shall require the Contractor to indemnify and hold the County and the City harmless from and against all losses, claims, demands, liabilities, injuries, damages and expenses, including, without limitation, attorneys' fees and court costs the County or the City

may suffer or incur as a result of the use, occupancy and possession of the Temporary Easement by Contractor, its agents, subcontractors, employees or representatives which may arise from their negligent or wrongful performance while constructing the Trail Connection.

2.6 The County's contract with the Contractor shall permit no liens to be placed on City Land or the Easement Area as a result of the construction of the Trail Connection.

3.0 OWNERSHIP

Upon (i) the substantial completion of the Trail Connection in accordance with the Contract Documents (ii) receipt of proof of final payment of all sums due pursuant to the Contractor; and (iii) final payment of all sums due any other contractor, subcontractor or material for work or materials related to the construction of the Trail Connection, the City will accept as a City-owned public improvement all improvements on sections of the Trail Connection on City Land, the Easement Area, CDOT Land.

4.0 MAINTENANCE

4.1 The City shall maintain all sections of the Trail Connection improvements owned by the City. Except as provided in paragraph 5.2, below, the County shall maintain those sections of the Trail Connection improvements owned by the County and sections of the Trail Connection improvements located on BNSF land.

4.2 Upon substantial completion of the Trail Connection, the City shall be responsible for performing routine and annual maintenance tasks for the Trail Connection, as determined to be necessary at the City's sole discretion and at the City's sole cost and expense.

5.0 WETLANDS

5.1 The City shall obtain all required City wetland permit(s) for wetland impacts located on City Land or the Easement Area.

5.2 The County shall obtain necessary wetland permits from the US Army Corps of Engineers for all impacted wetlands.

6.0 NOTICE

Whenever notice is required to be given hereunder, it shall be in writing and may be sent by facsimile or delivered to the party entitled thereto or mailed to the party entitled thereto by registered or certified mail, return receipt requested. Until changed by notice in writing, notice shall be given as follows:

To the County:

George Gerstle, Director
Department of Transportation
PO Box 471
Boulder, CO 80306
Fax: 303-441-4594

To the City:

Director of Open Space and Mountain Parks
City of Boulder Open Space and Mountain Parks
PO Box 791
Boulder, CO 80306

Executive Director of Public Works
City of Boulder Public Works
PO Box 791
Boulder, CO 80306

Director of Parks and Recreation
City of Boulder Parks and Recreation
PO Box 791
Boulder, CO 80306

City Manager
PO Box 791
Boulder, CO 80306
Fax: 303-441-4478

With Copy to:
Boulder County Attorney
PO Box 471
Boulder, CO 80306
Fax: 303-441-4794

With Copy to:
Boulder City Attorney
PO Box 791
Boulder, CO 80306
Fax: 303-441-3859

7.0 MISCELLANEOUS

7.1 Entire Agreement. This document and all exhibits hereto, shall constitute the entire Agreement of the Parties, superseding all prior oral or written communications.

7.2 Governing Law and Venue. This Agreement shall be governed by the laws of the state of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

7.3 No Waiver. The waiver by any Party of any breach of any term, covenant or condition of this Agreement by another Party shall not be deemed a waiver of such term, covenant, or condition for any subsequent breach of the same or of any other term, covenant, or condition of this Agreement. Delays in enforcement or the waiver of anyone or more defaults or breaches of this Agreement by a Party shall not constitute a waiver by that Party of any of the other terms or obligation of this Agreement.

7.4 Binding Effect. The City and the County each bind itself, its successors and assigns to the other party to this Agreement with respect to all rights and obligations under this Agreement.

7.5 Third Parties. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the City and the County and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the City and the County and not for the benefit of any other party.

7.6 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

7.7 Modification. This Agreement may only be modified upon written agreement of the Parties.

7.8 Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either party without the written consent of the others.

7.9 Governmental Immunity. The City and the County certify that they are self-insured for property and general liability coverage including errors and omissions to the limits set forth in the Colorado Governmental Immunity Act. The City and the County, their officers, and their employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended (the "CGIA"), or otherwise available to the City, the County and their respective officers or employees.

7.10 Rights and Remedies. Any Party hereto shall have the right to enjoin any substantial breach or threatened breach of this Agreement by any other Party, and shall have the right to specific performance of this Agreement. The rights and remedies of the Parties under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit any of the Parties' legal or equitable remedies, or the period in which such remedies may be asserted, for negligent or defective performance.

7.11 No Joint Venture. Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee or other relationship between the Parties other than independent contracting parties. Except as permitted under the remedies provision hereunder, no Party shall have the express or implied right to act for, on behalf of, or in the name of any other Party.

7.12 Authority. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

7.13 No Multiple Fiscal Year Obligations. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Agreement, the County's and the City's obligations under this Agreement are subject to annual appropriation by the Board of County Commissioners and the City Council, respectively. Any failure of a Board of County Commissioners or a City Council annually to appropriate adequate monies to finance that Party's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted.

IN WITNESS THEREOF, City and County have executed this Agreement as of the day and year first above set forth.

CITY OF BOULDER

BOULDER COUNTY

City Manager

Cindy Domenico, Chair

ATTEST:

Elise Jones, Commissioner

City Clerk on behalf of the
Director of Finance and Record

Deb Gardner, Commissioner

APPROVED AS TO FORM:

ATTEST:

City Attorney's Office

Clerk to Board



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 5, 2013

AGENDA TITLE: Consideration of a motion to adopt a resolution approving and authorizing an application for a Great Outdoors Colorado School Play Yard Initiative Grant.

PRESENTER/S

Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Kirk W. Kincannon, CPRP, Director of Parks and Recreation
Alice Guthrie, Recreation Superintendent
Jeff Dillon, Parks and Planning Superintendent

EXECUTIVE SUMMARY

The purpose of this agenda item is to request consideration and approval of a resolution authorizing an application for a Great Outdoors Colorado (GOCO) School Play Yard Initiative Grant due on March 15, 2013 (Attachment A). This grant, if awarded, will provide additional \$100,000 of funding for the renovation of the joint school/park play yard at Horizons K-8, adjoining Admiral Arleigh A. Burke Park.

The GOCO grant program is a competitive process open to all cities, counties, and parks and recreation districts in Colorado. This special initiative encourages partnerships between local government and school and/or school district, to construct or improve school play yards for the benefit of kids in rural and urban communities across the state.

Horizons K-8 School (Horizons) is directly adjacent to Admiral Arleigh A. Burke Park. Horizons recently constructed an addition to the school causing a need for the playground to be repositioned. Horizons partnered with the Parks and Recreation Department to create a joint development plan including the school play yard and the adjacent neighborhood park. The joint planning effort will integrate and increase the recreation and learning opportunities for the school and the neighborhood. (Attachment B)

GOCO School Play Yard Initiative Grant funding will help fulfill the immediate needs proposed in the renovation plan. The school play yard is used by school children while

school is in session and neighborhood children outside of those times. During the playground repositioning, one of the play structures was relocated but most no longer met code and had to be removed. In addition, other play areas were reduced to hard packed dirt during construction. This grant would allow the school to rejuvenate the area for an enriched play and learning experience. The play structures that were not code compliant will be replaced and a natural play space will be created for unstructured exploration and play. The renovation proposed for the GOCO grant is entirely on school property and will not impact any future work on the park related to water quality or park use.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving the GOCO Grant application allowing for the development of Horizons K-8 and Admiral Arleigh A. Burke Park Joint Renovation.

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt a Resolution approving and authorizing an application for a Great Outdoors Colorado School Play Yard Initiative and acceptance of funds for Horizons K-8 and Admiral Arleigh A. Burke Park Joint Renovation.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: A successful GOCO grant application would supplement existing school funds making Horizons K-8 and Admiral Arleigh A. Burke Park Joint Renovation.
- Environmental: The natural play area will offer opportunities for environmental learning and nature discovery for Horizons and neighboring children.
- Social: The Horizons K-8 and Admiral Arleigh A. Burke Park Joint Renovation plan was created in partnership with Horizons students and parents, members of the Frasier Meadows Retirement Community, park and school neighbors, the University of Colorado's Growing Up Boulder and Environmental Design School, Biohabitats, Boulder Valley School District, Keep it Clean Partnership, and Mountain View Methodist Church.

OTHER IMPACTS

- Fiscal: A 25 percent match by the grant recipient(s) is required for the GOCO School Play Yard Initiative Grants. Horizons is providing the grant match for this project. The minimum match needed for the grant is \$33,500. Horizons K-8 Council Board and Finance Review Committee endorsed the line item for the Horizons K-8/Burke Park Community Playground and Natural Play Space as part of their 2012-2013 budget. The required additional funds will be met through in-kind donations and services through the efforts of Horizons K-8 prior to signing the final contract in June.

- Staff time: Horizons will lead the grant application process with support from Parks and Recreation Department, which is included in the department's current work plan.

BOARD AND COMMISSION FEEDBACK

The Parks and Recreation Advisory Board (PRAB) is in support of Horizons K-8 and Admiral Arleigh A. Burke Park Joint Renovation. The board had monthly updates throughout the collaborative design process in 2012. The final concept plan, as intended for the grant application, will be presented to PRAB on February 25, 2013.

The Water Resources Advisory Board (WRAB) was updated on the project on Nov. 19, 2012. WRAB had no objections to the project, including future phases that may include water based outdoor education opportunities near the lake.

PUBLIC FEEDBACK

There have been multiple avenues for community collaboration. In collaboration with Horizons K-8, the students were involved in playground and park planning through a four-week class where the students explored their biohabitat, participated in design charrettes and model making, interviewed and made art with community members. During the November neighborhood design workshop, the students presented their ideas to the surrounding neighborhood, residents of Frasier Meadows Retirement Community, and the students, staff, and families of Horizons K-8.

The second neighborhood meeting in January was conducted at Frasier Meadows Retirement Community to discuss park priorities from a multi-generational perspective. Residents and homeowners joined students from Horizons and CU in a dialogue about the priorities and perspectives of the school/park development plan.

The department will continue to engage the community in an appropriate manner to ensure that the community is informed and included throughout the process.

BACKGROUND

Horizons approached the Parks and Recreation Department in January of 2012 with a request for partnership on a Great Outdoors Colorado Grant in the amount of \$100,000. The immediate need for the school was the repositioning of the playground and replacement of non-compliant play structures although the grander vision was to create an integrated school yard/ neighborhood park project offering students and neighbors an enhanced outdoor experience in both free play and education.

The city and BVSD have worked together with many other partners and participants over the last year to create the final concept plan for this innovative school/park project. The first phase fulfills as many of the immediate needs as possible with current available funding as a match for the GOCO grant. Future phases will be developed as funding becomes available.

ANALYSIS

The deadline for this GOCO special initiative grant is March 15, 2013. GOCO is scheduled to review the School Play Yard Initiative Grant applications in April/May with an award date on June 11, 2013. Horizons K-8 and Admiral Arleigh A. Burke Park Joint Renovation is anticipated to begin fall of 2013.

ATTACHMENTS

- A: Draft Resolution
- B: Area Map

RESOLUTION NO. __1120__

RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A SCHOOL PLAY YARD GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO (GOCO) TRUST FUND AND THE COMPLETION OF HORIZONS K-8 AND ADMIRAL ARLEIGH A. BURKE PARK JOINT RENOVATION

WHEREAS, the City of Boulder supports the Great Outdoors Colorado grant application for Horizons K-8 and Admiral Arleigh A. Burke Park Joint Renovation; and.

WHEREAS, the City of Boulder supports the completion of Horizons K-8 and Admiral Arleigh A. Burke Park Joint Renovation if the grant is awarded; and.

WHEREAS, the City of Boulder has partnered with Horizons K-8 to request \$100,000 from Great Outdoors Colorado for Horizons K-8 and Admiral Arleigh A. Burke Park Joint Renovation.;

BE IT RESOLVED, That the Mayor and the City Council of the City of Boulder strongly support the application for a grant to Great Outdoors Colorado; and

BE IT RESOLVED, That if the grant is awarded, the Mayor and the City Council of the City of Boulder strongly support the completion of the project; and

BE IT RESOLVED, That if the grant is awarded, the Mayor and the City Council of the City of Boulder will enter into an intergovernmental agreement with Boulder Valley School District to confirm the funding necessary to meet the terms and obligations of any Grant awarded.

BE IT RESOLVED, That if the grant is awarded, the Mayor and the City Council of the City of Boulder will enter into an intergovernmental agreement with Boulder Valley School District to ensure the maintenance of the Horizons K-8 and Admiral Arleigh A. Burke Park Joint Renovation project in a high quality condition for its useful life. It will be stated in the Intergovernmental Agreement that the Boulder Valley School District will appropriate funds for maintenance in its annual budget.

BE IT RESOLVED, That if the grant is awarded, the City of Boulder hereby authorizes the Parks and Recreation Director, Kirk Kincannon, to sign the grant agreement with Great Outdoors Colorado.

BE IT FURTHER RESOLVED, That this resolution is to be in full force and effect from and after its passage and approval.

APPROVED this 5th day of March, 2013

Mayor, Matthew Appelbaum

This Page Intentionally Left Blank

Admiral Arleigh A Burke Park adjoining Horizons K-8 School



This Page Intentionally Left Blank

**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 5, 2013

AGENDA TITLE: Motion to introduce and order published by title only on first reading, the three ordinances as follows: Ordinance 7891 amending Section 6-14, “Medical Marijuana,” B.R.C. 1981; Ordinance 7892 adding a new Chapter 5-10, “Marijuana Offenses,” B.R.C. 1981; and Ordinance 7893, adding a new chapter 6-16, “Recreational Marijuana,” and a new section 4-20-67, “Recreational Marijuana Businesses,” B.R.C. 1981, all to implement and comply with the requirements of Amendment 64 to the Colorado State Constitution.

PRESENTERS:

Tom Carr, City Attorney
Kathy Haddock, Senior Assistant City Attorney
Mishawn Cook, Licensing Manager

EXECUTIVE SUMMARY:

On November 6, 2012, Colorado voters approved Amendment 64 to the Colorado State Constitution regarding the use and regulation of marijuana. The legalization of marijuana presents several regulatory challenges for the City of Boulder. These include whether to license businesses, how to regulate private cultivation and the extent local laws are necessary to regulate underage use and public consumption. This agenda item is intended to begin the legislative process for regulation of legalized marijuana in Boulder. Staff has drafted three ordinances. One makes minor amendments to the medical marijuana code necessitated by Amendment 64. A second adds a section to the city’s general offenses to prohibit public consumption of marijuana and possession by individuals under 21 years old. Staff recommends that council adopt these two ordinances quickly, with the latter to take effect June 1, 2013. The third ordinance addresses regulation of recreational marijuana with requirements similar to those for medical marijuana with adjustments as recommended by the cross-departmental marijuana enforcement team.

The third ordinance regulating recreational marijuana maintains the regulatory philosophy that council applied to medical marijuana to the extent possible. It is not necessarily an easy fit. Recreational marijuana is legal for those 21 years of age and older, medical marijuana is available to those 18 years of age and older (and in limited circumstances under 18 years of age). In regulating medical marijuana, council adopted a wellness model focusing on marijuana as medicine. Boulder’s medical marijuana code permits sale only to registered patients. It requires that dispensaries provide wellness services in addition to selling marijuana. Medical marijuana businesses are vertically integrated because of a state law requiring that medical marijuana dispensaries grow at least 70 percent of the marijuana offered for sale. Council ultimately will need to decide

what regulatory approach to take. If council determines to adopt a different regulatory approach than that used for medical marijuana and in the attached ordinance, it will require extensive staff work and public input. This effort may very well take several months before final adoption.

It remains staff's recommendation that the most prudent course would be to enact a moratorium on recreational marijuana businesses until it becomes clear what regulatory approach the state and federal governments adopt. The reasons for the recommendation are set forth in the agenda memorandum presented at the December 4, 2012, council meeting. [December 4, 2012, Council Packet](#), Agenda Item 7A.

The alternative is to adopt the third ordinance attached here to give those who may be interested in recreational marijuana businesses an idea of what the city will require when it starts accepting license applications on January 2, 2014. This ordinance can then be amended before January, if necessary, to be consistent with state and federal actions.

STAFF RECOMMENDATION:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce and order published by title only on first reading, the three ordinances as follows: Ordinance 7891 amending Section 6-14, "Medical Marijuana," B.R.C. 1981; Ordinance 7892 adding a new Chapter 5-10, "General Offenses," B.R.C. 1981; and Ordinance 7893, adding a new chapter 6-16, "Recreational Marijuana," and a new section 4-20-67, "Recreational Marijuana Businesses," B.R.C. 1981, all to implement and comply with the requirements of Amendment 64 to the Colorado State Constitution.

Staff recommends council pass Ordinance 7891 amending Section 6-14, "Medical Marijuana," B.R.C. 1981, and Ordinance 7892, adding a new Chapter 5-10, "General Offenses, B.R.C. 1981, and place them on the consent agenda for second reading at the next meeting. For recreational marijuana regulation, staff recommends that council adopt Ordinance 7893, adding a new chapter 6-16, and a new section 4-20-67, B.R.C. 1981 and set it for second reading or direct staff to prepare an ordinance banning recreational marijuana establishments in Boulder until December 31, 2014. If council intends to regulate recreational marijuana significantly different than the proposed ordinance, the ban will allow time to amend work plans and find additional staff to draft such regulations once the state and federal governments determine what they intend to do.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

- Economic: It is not clear yet what economic impact the production and sale of marijuana for recreational use will have. Medical marijuana businesses average approximately \$200 million in annual sales in Boulder. Thus far, the federal government has not interfered significantly with medical marijuana businesses in Colorado. It remains to be seen whether the federal government will continue the

hands-off approach when it comes to recreational use. The nature and extent of federal enforcement or the uncertainty of the federal approach could limit the economic impact of recreational marijuana businesses. The application fees for recreational marijuana business applications are limited by Amendment 64 to an amount less than the city found was the cost for processing medical marijuana applications. Unless the licensing fee imposed for recreational marijuana makes up the difference in the cost of processing applications, the city will have to subsidize those costs.

- Environmental: The most significant impacts are associated with cultivation facilities and marijuana infused product manufacturers (MIPs). Boulder's code currently requires that medical marijuana cultivation facilities use only pesticides deemed safe for food production. Marijuana businesses face a challenge to control the odor associated with growing, processing and possessing marijuana. MIPs can produce flammable and noxious gases.
- Social: There is insufficient data to address the social impacts of the availability of marijuana without legal constraints.

OTHER IMPACTS:

- Fiscal: The city received \$789,720.84 in sales and use tax revenue from medical marijuana businesses in 2012. The application fee that the city can charge for converting a medical marijuana business to a recreational marijuana business is capped at \$500, which is approximately 10 percent of the cost to the city of processing a medical marijuana license application. The state could provide one-half of the state application fee (capped at \$5,000), which is approximately 50 percent of the cost to the city of processing applications. There is no limit on the licensing or operating fees that the city can charge.
- Staff time: Drafting an ordinance prohibiting recreational marijuana businesses can be accomplished with existing staff. Preparing for licensing by October 2013 will require approximately six months and significant staff time that is not in any department work plan. Whether additional staff will need to be hired will depend upon the nature and extent of the regulatory scheme that council adopts. A licensing-only regulation that maintains the same requirements as for medical marijuana will most likely require some additional staff. If council decides to allow marijuana clubs or creates a marijuana advisory board, this would most likely require significant additional staff resources.

PUBLIC FEEDBACK AND REQUESTS:

City staff held a meeting with medical marijuana businesses on November 26, 2012, to obtain information about the anticipated effect of recreational marijuana on medical marijuana businesses. The results of this meeting were included in the December 4, 2012, agenda memorandum. The Council Agenda Committee scheduled the proposed recreational marijuana ordinance for a public hearing at first reading to allow for extensive public feedback at an early stage. The interdepartmental staff group that has been working on marijuana enforcement issues has analyzed the effects of Amendment

64 to the extent known at this time and its recommendations are included in the proposed ordinance.

BACKGROUND:

Amendment 64 legalizes the following:

- Possessing marijuana accessories or one ounce or less of marijuana;
- Growing up to six marijuana plants, with three or fewer being mature, flowering plants, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale;
- Transfer of one ounce or less of marijuana without remuneration to a person who is 21 years of age or older;
- Using marijuana in private.

Amendment 64 leaves a number of uncertainties:

- Will the federal government sue to enjoin implementation? If the federal government is going to take action, will it wait until after the state adopts implementing legislation as it did in challenging Arizona's immigration laws?
- If the federal government takes action, will it begin with retail stores within 1,000 feet of schools (including universities) as it did for medical marijuana?
- Will the justice department take criminal action against businesses?
- What affect will Amendment 64 have on established medical marijuana businesses?
- Will the state legislature or department of revenue authorize businesses selling, processing or growing marijuana, and if so, what business structure will be adopted?
- Within the regulatory scheme specified in Amendment 64, what, if any, authority will the state delegate to local governments for local licensing and enforcement?
- Will the state adequately fund whatever law it adopts so that there is review of licensing applications and enforcement of violations?

In light of these uncertainties, it will be difficult to avoid multiple rounds of legislation to adapt to the changing landscape. The interdepartmental staff group that has been working on marijuana enforcement issues has analyzed the effects of Amendment 64 to the extent known at this time and its recommendations are included in the proposed ordinances. What is presented today is the staff's best effort to produce an ordinance that council could adopt to regulate recreational marijuana similar to the way the city regulates medical marijuana.

ANALYSIS:

I. Changes Necessary to the Medical Marijuana Ordinance (Ordinance 1, Attachment A)

The proposed changes would:

1. Remove the definition of marijuana as illegal under Colorado law;
2. Clarify definitions of business manager and medical marijuana, and add a definition of marijuana business (to include both recreational and medical) and marijuana establishment (a licensed recreational marijuana business);
3. Add that denial of an application for a recreational marijuana license is grounds for denial of a medical marijuana business application;
4. Add the changes to the provisions regarding locations of medical marijuana businesses to:
 - a. Mixed use developments. The proposed ordinance would ban medical marijuana businesses in mixed use developments that have at least one residential unit.¹
 - b. Incorporate the federal 1000 foot separation standard from schools, universities, playgrounds and housing authority properties into medical marijuana licensing for locations established after March 5, 2013.
5. Expand the section regarding restricted areas to refer not only to underage people, but to patients, licensees and employees; and
6. Add a prohibited act for falsely labeling medical marijuana infused products.

II. General Offense Amendments (Ordinance 2, Attachment B)

Staff proposes adding a new chapter 5-10 to the city's general offenses. The proposed new chapter is modeled closely after chapter 5-7, "Alcohol Offenses," B.R.C. 1981. This chapter would include the following:

- A ban on consumption of marijuana in public or properties open to the public, including outdoor smoking areas, private clubs and in premises licensed under the medical marijuana code or the recreational marijuana code;
- A ban on selling to, giving to or procuring marijuana for minors;
- A ban on possession or sale of marijuana by minors;
- A ban on growing marijuana outside of an enclosed, locked space;
- Rules for marijuana trials.

In 2010, the city took over prosecution of minors in possession of alcohol cases from Boulder County. The Municipal Court currently handles approximately 1,700 minor-in-possession-of-alcohol tickets each year. Both the Boulder Police Department and the

¹ The Recreational Marijuana ordinance includes an identical provision.

University of Colorado Police Department write minor in possession tickets into the Municipal Court.

The court takes a proactive problem-solving approach to these cases, encouraging alcohol education and treatment in lieu of punishment. Nevertheless, assuming that Boulder County does not undertake to address minors in possession of marijuana, these cases would represent a significant additional workload for the Municipal Court. It is difficult to predict all of the impacts of this workload. Additional staff may be required at some point in the future. This would be addressed through the budget process. Nevertheless, there does not appear to be an alternative to adopting a minor-in-possession ordinance.

Staff recommends an effective date of June 1, 2013. This will allow time for the Municipal Court to plan for handling this additional caseload. In addition to the logistics of handling additional new cases, court staff will need to research appropriate strategies for handling Minor in Possession of Marijuana cases. Court staff screen alcohol MIP defendants to assess the nature and extent of any alcohol issues. The Court uses the screen results to assign defendants to alcohol education classes or dependency treatment as appropriate. Court staff will need to research appropriate screening tools and potential education or treatment options to implement an effective program. Starting such a program in June will allow staff to work through the implementation phase of the program before the court's busiest months of August through October.

III. Regulating Recreational Marijuana (Ordinance 3, Attachment C)

The city has an established medical marijuana regulatory scheme. The proposed ordinance adapts that scheme to recreational marijuana. This is really just a starting point. There are many questions about how to regulate recreational marijuana businesses that will need to be answered over the coming months. The proposed ordinance addresses many of these issues. While staff has attempted to stay close to the medical marijuana regulatory scheme, there are inevitable differences. For example, the size of a medical marijuana business is limited. Both wellness centers and cultivation are limited by the patients registered with the associated businesses. The number of patients constrains the number of plants and the amount of marijuana the distributors can have on hand. Recreational marijuana has no such constraints. By definition, anyone 21 and over can acquire marijuana under Amendment 64. In the absence of state regulation limiting the size of a recreational marijuana business, the city will have to decide whether to limit the size of recreational marijuana businesses.

Staff proposes that recreational marijuana in residences be handled the same as medical marijuana. Possession of more than six plants, the marijuana from those plants contained in the same locked and enclosed space in which the plants were grown, or one ounce of marijuana is by definition a "recreational marijuana business." The description of the number of plants, product from the plants and one ounce are the same as what is decriminalized by Amendment 64. Amendment 64, like medical marijuana, prohibits more than one-half of the plants on any premises to be mature flowering plants. For recreational marijuana businesses staff proposes that the size be limited to the size that can be inspected by one officer so that a team of officers is not required to inspect a recreational marijuana business. For cultivation facilities that is 500 plants or less, and

for retail locations, it is a maximum of 2,000 square feet for the entire business and a maximum of 1,000 square feet for the restricted area (where marijuana can be) and the security and electronic and paper records required of the business. For MIPs (marijuana-infused products manufacturers), the size is limited to 600 pounds of unprocessed marijuana and 150 pounds of marijuana-infused products, based on the average of the amount of marijuana that is cultivated from 250 flowering plants. Of course, recreational marijuana facilities will not be required to have wellness facilities or consultation rooms like medical marijuana facilities. Thus, recreational marijuana facilities will have more floor space to devote to retail and storage of marijuana.

To regulate recreational marijuana like alcohol, the proposed ordinance allows an owner to own only one recreational marijuana center just as an owner can own only one retail liquor store. The proposed ordinance does allow the owner of a recreational marijuana center to also own a cultivation facility and a MIP, but does not allow an owner of a licensed medical marijuana business. The proposed ordinance retains the existing use categories for MIPs and cultivation facilities. For retail recreational businesses, the use category suggested is for convenience retail stores 2,000 square feet or less.² A cultivation facility is permitted in any zone district in which a greenhouse/nursery is permitted as a right (the zone districts in which there is an “A” on the chart below). Recreational infused product facilities are permitted in any zone district allowing 15,000 square feet or less for manufacturing³.

The following table lists the zone districts for the existing uses:⁴

Use Modules	R7	M1	M2	M3	B1	B2	B3	B4	B5	D1	D2	D3	I1	I2	I3	I4	P	A
Personal service uses	A	A	A	A	A	A	A	A	A	A	A	A	*	*	*	*	*	*
Manufacturing uses ≤15,000 square feet	*	*	*	*	*	*	*	A	*	*	*	*	A	A	A	A	*	*
Manufacturing uses >15,000 square feet	*	*	*	*	*	*	*	*	*	*	*	*	U	A	A	A	*	*
Greenhouse and plant nurseries	*	*	*	*	*	*	*	*	*	*	*	*	A	A	A	A	A	A

The use table for proposed additional use category is as follows:

Use Modules	R2	R3	R4	R6	R7	M1	M3	B1	B2	B3	B4	B5	D2	D3	I1	I2	I4
Convenience retail sales ≤2,000 square feet	U	U	U	U	A	A	A	U	A	A	U	U	A	A	C	C	C

² This is to determine zone districts where recreational marijuana businesses are allowed. Staff recommends that the size of retail stores and MIPs be less than the use categories allow so that they can be inspected with one officer rather than requiring two officers for any inspection, as more specifically described below.

³ For medical marijuana, the MIP is allowed in either manufacturing use category, but the size is limited by the state.

⁴ The abbreviations have the following meanings:

A: Allowed use.

C: Conditional use.

*: Use prohibited.

U: Use review.

G: Allowed use provided that it is located above or below the ground floor.

We have continued to have problems with MIPs because distilling marijuana from the plant involves untested processes and alcohol or solvents. Further defining when doing anything with marijuana qualifies as cultivation (allowed at a cultivation facility) or production (allowed at a MIP) is not always a bright line. Some provisions that we learned from medical marijuana are being carried over into the provisions regarding recreational marijuana. For instance, placing “shake” that falls off of the raw marijuana at a center into a package is not considered “production” or “repackaging” that is not normally allowed at a center, so that employees at centers can package the shake for sale rather than throwing it away or taking it back to the cultivation facility for packaging (Section 6-14-8(t) and 6-16-8(t)); if there is not a higher requirement in the building codes regarding the type of separation between a MIP and a cultivation facility, for marijuana, there is a minimum of a one-hour fire wall required to separate the businesses (Section 6-14-8(r)(2) and 6-16-8(r)(2)).

The proposed ordinance allows for conversion of a medical marijuana business to a recreational marijuana business by submitting an application similar to an application for renewal of an existing license if the business meets all of the requirements for a recreational marijuana license, including the proper zone district (Section 6-16-3(f)). A conversion cannot be made from a recreational marijuana business to a medical marijuana business because the requirements for a medical marijuana center are different.

The ordinance does not permit consumption anywhere other than a private residence. Again, this is a provision carried over from the Medical Marijuana Code. At some point council will need to address whether the regulatory model should include on premises consumption of marijuana. That is, the question whether Boulder wants to create Amsterdam style “coffee houses” for on premise consumption of marijuana.⁵ The current regulatory environment creates several obstacles to the creation of such businesses. The city’s smoking ban includes marijuana. It prohibits smoking of any substance in any structure in the city, with limited exceptions including residences. Amendment 64 does not protect consumption of marijuana “that is conducted openly and publicly or in a manner that endangers others.” Thus any place where members of the public can go runs afoul of both Boulder’s smoking ordinance and Amendment 64 at least with respect to smoked marijuana. Amendment 64 does not define “publically.” Some have assumed that consumption in a private club would not constitute public consumption under Amendment 64. That is not clear from the language of the amendment. Nevertheless, smoking is not allowed in private clubs in Boulder. In addition, for-profit private clubs are not a defined use under the Boulder zoning code. There is a use defined as follows:

"Nonprofit membership club" means a nonprofit organization with established formal membership requirements and bylaws, and with the objective of providing for the interests of its members.

⁵ Frustrated with the effects of marijuana tourism, a conservative Dutch government adopted a law restricting the sale of marijuana to Dutch nationals effective January 1, 2013. The government collapsed and was replaced by a center left coalition. In November 2012, the new government amended the law to allow local jurisdictions to decide whether to apply the restriction. Amsterdam announced that it would not apply the restriction and continue to allow sales to foreign tourists. Maastricht, a university town with a population of 150,000 decided to adopt the restriction.

§ 9-16-1(c) “Definitions,” B.R.C. 1981.

Thus, under the current Boulder code, the only potential marijuana club would be a not-for-profit organization that did not allow smoking. The current code allows nonprofit membership clubs as follows:

Use Modules	B1	B2	B3	B4	B5	D1	D2	D3	P
Nonprofit membership clubs	U	G	A	A	A	A	A	A	U

Assuming that council does not intend to permit such clubs for marijuana consumption, the proposed ordinance would prohibit marijuana consumption in nonprofit membership clubs. If council seeks to allow such activity, this language should be deleted. The proposed ordinance defines places open to the public in the same manner as for medical marijuana.

The proposed ordinance sets January 1, 2014, as the first date that the city will accept license applications. Staff proposes this date to allow for planning through the budget process to staff the licensing process adequately. If the experience with medical marijuana is any precedent, the city will be receiving many applications for recreational marijuana licenses on day one. Under Amendment 64 a local government has only 90 days to process an application. Many of the original applicants for medical marijuana licenses had little if any business experience and were overwhelmed by the licensing process. Staff was required to expend significant effort to assist these applicants. Without adequate staff, the city could be placed in a position of being unable to fulfill its constitutional duty to process license applications in 90 days. Although the language in Amendment 64 is vague, it appears that the first day that an applicant can apply to the state or a local government is October 1, 2013. The proposed ordinance establishes a three month delay, to allow for staff levels to be adjusted through the budget process. The proposed ordinance also requires that the application include the results of background checks from CBI and FBI. Without this requirement, the city may be required to make the licensing decision without results from the background checks.⁶

The process would be more orderly if council exercised the authority under Amendment 64 to adopt a temporary ban of recreational marijuana businesses. Attachment D is a chart prepared by the Colorado Municipal League summarizing municipal actions to date regarding recreational marijuana. Locally, Superior, Lafayette, Westminster, Broomfield and Lakewood have enacted some form of a ban. The Denver City Council will consider a ban in April.

⁶ Because of the number of background checks requested associated with issues regarding possession of firearms, the length of time to get results has increased substantially. The city receives results in six weeks to eight months depending on the backlog at the state and federal level.

ATTACHMENTS:

- A. Ordinance 7891 Amending Section 6-14, "Medical Marijuana," B.R.C. 1981;
- B. Ordinance 7892 Adding a new Chapter 5-10, "Marijuana Offenses," B.R.C. 1981;
- C. Ordinance 7893 Adding a new chapter 6-16, "Recreational Marijuana," and a new section 4-20-67, "Recreational Marijuana Businesses," B.R.C. 1981
- D. Colorado Municipal League Chart

ORDINANCE NO. 7891

AN ORDINANCE AMENDING CHAPTER 6-14 TO IMPLEMENT AND COMPLY WITH THE REQUIREMENTS OF AMENDMENT 64 TO THE COLORADO STATE CONSTITUTION, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
COLORADO:

Section 1. Subsection 6-14-1(a)(2), B.R.C. 1981, is amended to read:

6-14-1 Legislative Intent and Purpose.

(a) Legislative Intent. The city council intends to regulate the use, acquisition, cultivation, production and distribution of medical marijuana in a manner that is consistent with Article XVIII, Section 14 of the Colorado Constitution (the "Medical Marijuana Amendment.")

...

(2) Use, distribution, cultivation, production, possession and transportation of medical marijuana remains illegal under federal law, and marijuana remains classified as a "controlled substance" by ~~both Colorado and~~ federal law.

Section 2. Section 6-14-2, B.R.C. 1981, is amended to add the following definitions:

6-14-2 Definitions.

The following words and phrases used in this chapter have the following meanings unless the context clearly indicates otherwise:

...

Business manager means the individual designated by the owner of the medical marijuana business as the person responsible for all operations of the business in the absence of the owner from the business premises. Business manager shall include any person with managerial authority in the business, and any person that has access to lock or unlock the safe, to unlock or lock the business, or set or disarm the alarm.

Marijuana for this Chapter 6-14 means

(1) The same as the term "usable form of marijuana" as set forth in the Medical Marijuana Amendment; or

(2) May be more fully defined in any applicable state law or regulation.

Marijuana business shall mean a recreational marijuana business or a medical marijuana business.

Marijuana establishment shall have the same meaning as marijuana establishment in Chapter 6-16.

...

Place open to the general public means any property owned, leased or used by a public entity, and any place on private property retail malls, business open to the public, common areas of buildings, private clubs, and vehicles, and any place visible from such places.

...

Section 3. Section 6-14-5(a)(3)(A) and (13), B.R.C. 1981, are amended and a new subsection (14) is added to read:

6-14-5 Application.

(a) Application Requirements. An application for a medical marijuana business license shall be made to the City on forms provided by the city manager for that purpose. The applicant shall use the application to demonstrate its compliance with this chapter and any other applicable law, rule or regulation. In addition to the information required by chapter 4-1, "General Licensing Provisions," B.R.C. 1981, the application shall include the following information:

...

(3) A statement of whether or not any of the named owners, members, business managers, financiers, primary caregivers or persons named on the application have been:

(A) Denied an application for a medical marijuana business license pursuant to this chapter, for a recreational marijuana license pursuant to chapter 6-16, or any similar state or local licensing law, rule or regulation, or had such a license suspended or revoked.

...

(13) A description of all toxic, flammable or other materials regulated by a federal, state or local government that would have with authority over the business if it was not a marijuana business, that will be used or kept at the medical marijuana business, the location of such materials and how such materials will be stored.

(14) A description of the process(es) used to extract or distill marijuana from its source and the process used to incorporate marijuana into all products produced, including verifying compliance of all processes regulated by a federal state or local government that would have authority over the business if it was not a marijuana business.

Section 4. Section 6-14-7(c) and (f), B.R.C. 1981, is amended to read:

6-14-7 Locations of Medical Marijuana Businesses.

...

(c) No Recreational Marijuana Business in Building with Residences or Residential Zone Districts. It shall be unlawful to operate a medical marijuana business in a building which contains a residence, or within a dwelling unit within any zone district, or within a residential zone district- or on the premises of a development within a mixed-use zone district that includes a residence, as such districts are described in Table 5-1 of section 9-5-2, "Zoning Districts," B.R.C., 1981.

...

(f) Separation From Schools, Day Care Centers or Other Medical Marijuana Uses. No medical marijuana business license shall be issued for the following locations:

(1) Within five hundred feet of any elementary, junior high, middle or high school or state licensed day care center. Distances shall be measured by the City on official maps as the radius from the closest points on the perimeter of the applicant's property to the closest point of the property of the school or day care center. This restriction shall not apply to a medical marijuana business that is licensed by the City on November 1, 2012.

(2) Within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority. This restriction shall not apply to a medical marijuana business that is licensed by the City on March 5, 2013.

(3) Within five hundred feet of three other marijuana businesses, except that this limitation shall not apply in Industrial zones.

(A) Distances shall be measured by the City on official maps as the radius from the closet points on the perimeter of the applicant's property to the closest point of the property of any other medical marijuana business.

(B) To determine the proximity to other medical marijuana businesses and the priority of applications, businesses shall have priority in the following order:

(i) Businesses that are open and operating;

(ii) Businesses whose applications have been approved; and

(iii) Applications for medical marijuana business licenses that have been submitted by the applicant and declared complete by the City.

(iv) No other applications shall be considered "businesses" for this determination.

Section 5. Section 6-14-8(b) and (p) are amended to read:

6-14-8 Requirements Related to Operation of Medical Marijuana Businesses.

...

(b) Restriction on Access to Restricted Area: ~~Age Limitations.~~ No person, other than a patient, licensee, employee, or a contractor ~~under eighteen years of age~~ shall be in the restricted area. No person shall be allowed entry into the restricted area without showing a valid picture ID and evidence that the person is a patient, unless the person is accompanied by a parent or guardian.

...

(p) Advertisement. A medical marijuana business may not advertise in a manner that is inconsistent with the medicinal use of medical marijuana. A medical marijuana business may not advertise in a manner that is misleading, deceptive, false or is designed to appeal to minors. Advertisement that promotes medical marijuana for recreational or any use other than for medicinal purposes shall be a violation of this code. The following conditions shall apply:

(1) Any person licensed as a medical marijuana center or a medical marijuana-infused products manufacturer shall include in any advertisement for medical marijuana or any medical marijuana-infused product the following language: "For registered Colorado medical marijuana patients only." Provided, however, this language shall not be required to be displayed upon any sign identifying a medical marijuana center, as permitted by subparagraph (2)(a) below.

(2) Except as otherwise provided in this paragraph, it shall be unlawful for any person licensed under this article or any other person to advertise any medical marijuana or medical marijuana-infused product anywhere in the City where the advertisement is in plain view of or in a place open to the general public, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device as defined by the zoning code; any sign mounted on a vehicle; any hand-held or other portable sign; or any handbill, leaflet or flier directly handed to any person in a public place, left upon a motor vehicle or posted upon any public or private ~~property without the consent of the property owner~~. The prohibition set forth in this paragraph shall not apply to:

a. Any sign located on the same zone lot as a medical marijuana center which exists solely for the purpose of identifying the location of the medical marijuana center and which otherwise complies with this code and any other applicable city laws and regulations;

b. Any advertisement contained within a newspaper, magazine or other periodical of general circulation within the City or on the internet; or

c. Advertising which is purely incidental to sponsorship of a charitable event by a medical marijuana center or a medical marijuana-infused products manufacturer.

(3) It is an affirmative defense if a medical marijuana business employee provided another individual, upon request, a business card for the purpose of providing that person's name and business affiliation, including, without restriction, title, mailing address, email address and telephone number.

Section 6. Section 6-14-13(a)(1) is amended and a new subsection (33) is added to read:

6-14-13 Prohibited Acts.

(a) Prohibited Acts. It shall be unlawful for any person to:

(1) Cultivate, distribute, possess, produce, smoke, use or ingest marijuana for recreational use in plain view of, or in a place open to the general public.

...

(33) Label or distribute a marijuana-infused product that is not labeled as required by this code or other applicable law.

Section 7. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 8. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 5TH day of March 2013.

Attest:

Mayor

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this _____ day of _____, 2013.

Attest:

Mayor

City Clerk

ORDINANCE NO. 7892

AN ORDINANCE ADDING A NEW CHAPTER 5-10, "MARIJUANA OFFENSES," B.R.C. 1981 TO IMPLEMENT AND COMPLY WITH THE REQUIREMENTS OF AMENDMENT 64 TO THE COLORADO STATE CONSTITUTION, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. A new chapter 5-10, B.R.C. 1981, is added to read:

Title 5: General Offenses

Chapter 5-10 Marijuana Offenses

5-10-1 Definitions.

For purposes of this Chapter 5-10, the following words shall have the following definition:

Marijuana means all parts of the plant cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. It does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination if these items exist apart from any other item defined as "marijuana" in this subsection. *Marijuana* shall include any product containing marijuana.

Underage person means any person under twenty-one years of age.

5-10-2 Consumption of Marijuana in Public Prohibited.

(a) No person shall consume any marijuana in public.

(b) For purposes of this section, "in public" means:

(1) In or upon any public way or public right of way, whether in a vehicle or not; or

(2) On any property or in any building that is owned, leased, used by, or open to the public;
or

(3) In or upon those portions of any private property upon which the public has an express or implied license to enter or remain; or

- (4) In or upon any other private property without the express or implied permission of the owner or person in possession and control of such property or such person's agent; or
- (5) In or upon any place visible from any of the places identified in this subsection; or
- (6) In or upon any common area of any building or development; or (7) in or upon any private club as defined in Chapter 6-16; or
- (7) On the premises of a business licensed under chapter 6-14, B.R.C. 1981 or chapter 6-16, B.R.C. 1981; or
- (8) In a vehicle parked in any place identified in this subsection.

(c) No person shall drive or sit in the driver's seat of any motor vehicle, other than one carrying passengers for hire, in which a violation of subsection (a) of this section is occurring.

(d) The maximum penalty for a first or second conviction within two years, based on date of violation of this section, is a fine of \$500.00. For a third and each subsequent conviction within two years, based upon the date of the first violation, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply.

5-10-3 Unlawful to Sell or Give to or Procure for Minors.

No person shall sell, serve, deliver, or give away any marijuana or any product containing marijuana to any under age person or purchase marijuana or marijuana-infused product for an underage person.

5-10-4 Possession and Sale by Minors Unlawful.

(a) No underage person shall consume, possess or have under such person's control or request that any other person purchase for such underage person or sell, serve, give away or offer for sale any marijuana or any product containing marijuana.

(b) Prima facie evidence that a violation of this ordinance occurred within the City shall consist of:

- (1) Evidence that the defendant was under the age of twenty-one years and possessed or consumed marijuana within the City; or
- (2) Evidence that the defendant was under the age of twenty-one years and manifested any of the characteristics commonly associated with marijuana use or impairment while present anywhere within the City.
- (3) Indicia including bloodshot eyes, watery eyes, eyelid tremors, green particulate on tongue, dilated pupils, dry mouth or any other indicator of impairment.

(c) In any trial for a violation of this section, testimony of a competent witness, including the arresting officer, that the substance possessed exhibited the smell, appearance or other

characteristics of marijuana shall be sufficient to establish that the substance in question was in fact marijuana. The defendant may rebut such testimony with a laboratory test, performed at the defendant's expense demonstrating that the substance was not marijuana.

(d) An underage person and one or two other persons shall be immune from criminal prosecution under this section if they establish the following:

- (1) One of the underage persons called 911 and reported that another underage person was in need of medical assistance due to marijuana consumption;
- (2) The underage person who called 911 and, if applicable, one or two other persons acting in concert with the underage person who called 911 provided each of their names to the 911 operator;
- (3) The underage person was the first person to make the 911 report; and
- (4) The underage person and, if applicable, one or two other persons acting in concert with the underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

(e) Upon the expiration of one year from the date of a conviction of a charge under this section, the defendant may petition the municipal court for an order sealing the record of such municipal court charge. The court shall grant such petition if the petitioner has not been arrested for, charged with or convicted of any felony, misdemeanor, petty offense or criminal city ordinance violation during the period of one year following the date of such petitioner's conviction of charges under this section. Upon acquittal, dismissal or a decision not to file a charge under this section, the defendant may petition the municipal court for an order sealing the record of such municipal court charge and the court shall grant such petition.

(f) In any judicial proceeding in any court of this state concerning a charge under this section, the court shall take judicial notice of methods of testing a person's blood, breath, saliva or urine for the presence of marijuana and of the design and operation of devices certified by the department of public health and environment for testing a person's blood, breath, saliva or urine for the presence of marijuana. This subsection shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this subsection shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

(g) The maximum penalty for a first or second conviction within two years, based on date of violation of this section, is a fine of \$500.00. For a third and each subsequent conviction within two years, based upon the date of the first violation, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply.

5-10-5 Evidence of Marijuana in Trials.

(a) In any trial for a violation of this chapter, any witness with prior personal experience of the appearance, taste, or smell of marijuana may state an opinion that a substance was marijuana,

based on his or her observations and experience. The witness need not be offered as an expert witness.

(b) In any trial for a violation of this chapter, any witness may testify that a person manifested characteristics commonly associated with marijuana use or impairment, if the witness has personal experience or training that would enable the witness to recognize the characteristics. The witness need not be offered as an expert witness.

(c) In any trial for a violation of this section, any container or wrapper with labeling indicating the contents of the container or wrapper shall be admissible into evidence, and the information on any label on such container or wrapper shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the container or wrapper were composed in whole or in part of marijuana. A label identifying the contents of the container as "marijuana," "MJ," "weed," "bud," "sativa," "indica," or "kush," shall constitute prima facie evidence that the contents of the container was composed in whole or in part of marijuana.

(d) In any trial for a violation of this section, testimony of a competent witness, including the arresting officer, that the substance possessed exhibited the smell, appearance or other characteristics of marijuana shall be sufficient to establish that the substance in question was marijuana. The defendant may rebut such testimony with a laboratory test, performed at the defendant's expense demonstrating that the substance was not marijuana.

Section 2. This ordinance shall be effective June 1, 2013.

Section 3. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 4. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 5th day of March 2013.

Attest: _____
Mayor

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this ____ day of _____, 2013.

Attest: _____
Mayor

City Clerk

This Page Intentionally Left Blank

ORDINANCE NO. 7893

AN ORDINANCE ADDING A NEW CHAPTER 6-16, "RECREATIONAL MARIJUANA," B.R.C. 1981 AND ADDING A NEW SECTION 4-20-67, "RECREATIONAL MARIJUANA BUSINESSES," B.R.C. 1981 TO IMPLEMENT AND COMPLY WITH THE REQUIREMENTS OF AMENDMENT 64 TO THE COLORADO STATE CONSTITUTION, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,

Section 1. A new chapter 6-16, B.R.C. 1981, is added to read:

Title 6: Health and Safety and Sanitation

Chapter 6-16: Recreational Marijuana

6-16-1 Legislative Intent, Findings, and Purpose.

(a) Legislative Intent and Findings. The city council intends to regulate the use, possession, cultivation, production and distribution of marijuana in a manner that is consistent with Article XVIII, Section 16 of the Colorado Constitution (the "Recreational Marijuana Amendment") and finds that the provisions of this Chapter 6-16 are directly and demonstrably related to the operation of marijuana establishments in a manner to minimize negative impacts on the community.

- (1) The Recreational Marijuana Amendment to the Colorado Constitution does not provide a legal manner for businesses to grow or sell marijuana, but directs the Colorado Department of Revenue to adopt regulations by July 1, 2013. If the Department does not adopt regulations, local governments are required to adopt regulations by October 1, 2013. The city adopts this law to apply to all recreational marijuana operations in the city under the Recreational Marijuana Amendment, or any recreational marijuana business permitted under the state law.
- (2) No applications for a recreational marijuana business shall be accepted before January 2, 2014.
- (3) Marijuana use, distribution, cultivation and production can have an impact on health, safety, and community resources and the Code is intended to permit marijuana cultivation, distribution, and production where it will have a minimal impact, and potential negative impacts are minimized.

- (4) Use, distribution, cultivation, production, possession and transportation of marijuana remains illegal under federal law, and marijuana remains classified as a "Level 1 Controlled Substance" by federal law.
- (5) The General Assembly has indicated that it will adopt enabling legislation that will provide for local licensing, however the anticipated state law is not intended to address the local impacts of marijuana operations, making it appropriate for local regulation of marijuana operations.
- (6) Nothing in this chapter is intended to promote or condone the production, distribution or possession of marijuana in violation of any applicable law.
- (7) This chapter is to be construed to protect the public over marijuana business interests. Operation of a recreational marijuana business is a revocable privilege and not a right in the city. There is no property right for an individual or business to have marijuana in the city.
- (8) Marijuana businesses are a heavily regulated industry in the city, and the city has a zero tolerance policy for violations of this chapter.
- (9) This chapter is not intended to replace the Medical Marijuana law in Chapter 6-14 of this Code, and any person may apply for and operate a medical marijuana business pursuant to Chapter 6-14 without complying with this chapter.
- (10) This chapter is intended to specify the time place and manner restrictions for operating a recreational marijuana business in the city as specified in the Recreational Marijuana Amendment.
- (11) The operation of a marijuana business without a license from the city as provided in this chapter is prohibited within the city.
- (12) The experience of the city in processing and enforcing medical marijuana business licensing evidences that the provisions herein are capable and worthy of being carried out in practice by a reasonably prudent businessperson.
- (13) The Colorado Administrative Procedures Act, Article 4 of Title 24 of the Colorado Revised Statutes (the "APA"), does not apply to local governments and the state has not been able to resource the process thereof in a timely manner. The procedures herein for issuance and enforcement of a recreational marijuana business license are consistent with the requirements of the APA and have been determined by the Boulder District Court to provide the level of due process required by the United States and Colorado Constitutions.
- (14) A licensee is not acting in his or her capacity as an owner, employee, or agent of a licensed marijuana establishment if the licensee is operating in violation of this chapter or any other applicable law.

- (15) The city council has determined to allow marijuana establishments in the city on the condition that the establishments are operated in compliance with this chapter rather than banning marijuana establishments in the city as permitted by the Recreation Marijuana Amendment.

(b) Purpose. The purpose of this chapter is to protect the public health, safety and welfare of the residents, businesses, and property in the city by prescribing the manner in which recreational marijuana businesses can be conducted in the city. Further, the purpose of this chapter is to:

- (1) Provide for a means of cultivation, production, and distribution of marijuana to persons permitted to obtain, possess and use marijuana for recreational purposes under the Recreational Marijuana Amendment.
- (2) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, neighborhood and public safety, security for the business and its personnel, and other health and safety concerns.
- (3) Promote lively street life and high quality neighborhoods by limiting the concentration of any one type of business in specific areas.
- (4) Impose fees for licensing recreational marijuana businesses in an amount sufficient for the city to recover its costs of the licensing program.
- (5) Adopt a mechanism for monitoring compliance with the provisions of this chapter.
- (6) Create regulations that address the particular needs of the residents and businesses of the city and coordinate with laws that may be enacted by the state regarding recreational marijuana.
- (7) Facilitate the implementation of the Recreational Marijuana Amendment without going beyond the authority granted by it.
- (8) Support Boulder's Sustainability and Climate Action Plan goals by requiring renewable sources for energy use to grow recreational marijuana.
- (9) Issue recreational marijuana business licenses only to individuals and entities that have demonstrated an intent and ability to comply with this chapter without monitoring by city officials.
- (10) Protect public safety and residential areas by limiting the areas of the city where more than six marijuana plants may be grown.
- (11) Exclude from the definition of a *recreational marijuana business* the private possession, production and recreational use of marijuana by an individual or the private possession, production, distribution and recreational use of marijuana by

an individual, in the person's residence, to the extent permitted by Article XVIII, Section 16 of the Colorado Constitution.

(c) Relationship to State Law. The provisions in this chapter that are different from the applicable state law are consistent with the city's responsibility to protect the public health, safety and welfare as authorized by applicable law, and by the home rule authority granted to the city by Article XX of the Colorado Constitution and the Charter of the City. The city intends that both state law and this chapter apply within the city. Where this chapter conflicts with the state law, this chapter shall apply.

(d) Adoption of this chapter 6-16 is not intended to waive or otherwise impair any portion of the local option available under the Recreational Marijuana Amendment.

6-16-2 Definitions.

The following words and phrases used in this chapter have the following meanings unless the context clearly indicates otherwise:

Advertise means the act of drawing the public's attention, whether on print, signs or electronic means, to a recreational marijuana business in order to promote the sale of marijuana by the business.

Business manager means the individual designated by the owner of the recreational marijuana business as the person responsible for all operations of the business in the absence of the owner from the business premises. Business manager shall include any person with managerial authority in the business, and any person that has access to lock or unlock the safe, to lock or unlock the business, or set or disarm the alarm.

Cultivation or *cultivate* means (i) all phases of growth of marijuana from seed to harvest; or (ii) preparing, packaging or repackaging, labeling or relabeling of marijuana prior to consumption or incorporation into a recreational marijuana-infused product.

Cultivation facility means a licensed recreational marijuana business that produces and harvests marijuana plants for distribution by a licensed recreational marijuana center or a licensed recreational marijuana-infused product manufacturer. Except as included in this definition, a cultivation facility may not operate any production on its premises.

Distribute or *distribution* means the actual, constructive or attempted transfer, delivery, sale or dispensing of marijuana to another, with or without remuneration.

Fermented malt beverage has the same meaning as its meaning under the Colorado Beer Code, C.R.S. 12-46-103.

Financier means any person who lends money or otherwise provides assets to any person applying for a license or who has been issued a license under this chapter. Financier shall not include a bank, savings and loan association, credit union or industrial bank supervised and regulated by an agency of the state or federal government.

Licensee means the recreational marijuana business named on the recreational marijuana business license, and all individuals named in the recreational marijuana business license application or later reported to the city, including without limitation, owners, business managers, financiers and individuals owning any part of an entity that holds a financial or ownership interest in a recreational marijuana business.

Malt, vinous and spirituous liquor has the same meaning as its meaning under the Colorado Liquor Code, C.R.S. 12-47-108.

Marijuana for this Chapter 6-16 means:

- (i) The same as set forth in the Recreational Marijuana Amendment; or
- (ii) As may be more fully defined in any applicable state law or regulation.

Marijuana accessories shall have the same meaning as in the Recreational Marijuana Amendment.

Marijuana business means any medical marijuana business as defined in Chapter 6-14 or recreational marijuana business as defined in this chapter.

Marijuana establishment means a recreational marijuana business that has a license from the state and the city to operate.

Place open to the general public means any property owned, leased or used by a public entity, and any place on private property open to the public, common areas of buildings, private club, vehicles, and any place visible from such places.

Possess or possession means having physical control of an object, or control of the premises in which an object is located, or having the power and intent to control an object, without regard to whether the one in possession has ownership of the object. Possession may be held by more than one person at a time. Use of the object is not required for possession. The owner of a recreational marijuana business shall be considered in possession of the recreational marijuana business at all times. The business manager of a recreational marijuana business shall be considered in possession of the recreational marijuana business at all times that the business manager is on the premises of the business or has been designated by the owner as the business manager in the absence of the owner in accordance with this chapter.

Premises means a distinct and definite location, which may include a building, a part of a building, a room, or any other defined contiguous area.

Private club means any location, other than a residence of a person at the residence or a marijuana establishment.

Produce or production means (i) combining marijuana with any other substance for distribution, including storage and packaging for resale; or (ii) preparing, compounding, processing, encapsulating, packing or repackaging, labeling or relabeling of marijuana or

its derivatives, whether alone or mixed with any amount of any other substance. Production shall not include packaging or repackaging labeling or relabeling of marijuana if no production has occurred and such packaging and labeling qualify as cultivation.

Recreational marijuana means any marijuana intended for recreational use which meets all requirements for recreational marijuana contained in chapter 6-16 of this code, the Recreational Marijuana Amendment, and any other applicable law.

Recreational marijuana amendment means Article XVIII, Section 16 of the Colorado Constitution

Recreational marijuana business means (a) any person that cultivates, produces, distributes, possesses, transports or makes available more than six marijuana plants or one ounce of marijuana, or (b) any person that sells any amount of marijuana or (c) any person who possesses marijuana openly or publicly. The term *recreational marijuana business* shall not include the private cultivation, possession, production or use within a person's residence of no more than (a) six plants in an enclosed, locked space, or (b) one ounce of marijuana, or (c) the marijuana produced by no more than six plants on the premises where the plants were grown if the plants were grown in an enclosed locked space.

Recreational marijuana center means a licensed recreational marijuana business that distributes marijuana to any person or to recreational marijuana-infused product manufacturers or to another recreational marijuana center.

Recreational marijuana-infused product means a product infused with marijuana that is processed for use or consumption, including, without limitation, edible products, concentrates, ointments, tinctures and any item defined as a "marijuana product" in the Recreational Marijuana Amendment.

Recreational marijuana-infused product manufacturer means a licensed recreational marijuana business that produces recreational marijuana-infused products.

Recreational marijuana local licensing authority means the city manager. The city manager shall be the local licensing authority responsible for processing applications under this chapter for the purpose of any state law that requires the city to designate a local licensing authority and the recreational marijuana amendment.

Recreational marijuana plant means a marijuana seed and all parts of the growth therefrom including, without limitation, roots, stalks and leaves so long as the flowers, roots, stalks and leaves are all connected and in a growing medium. For purposes of this chapter, any part of the plant removed is considered harvested and no longer part of a recreational marijuana plant, but marijuana.

Restricted area means the portion of a recreational marijuana business location within which the licensee defines on its application it intends to cultivate, distribute, possess or produce recreational marijuana and which area is clearly identified as the restricted area

on the floor plan submitted with the recreational marijuana business license application for the business.

Violation of any law means a plea or finding of a violation of any law in a criminal, civil or administrative proceeding, whether part of a plea agreement, settlement agreement, or determination by an arbitrator, hearing officer, court or jury.

6-16-3 License Required.

(a) License Required. It shall be unlawful for any person to operate a recreational marijuana business without obtaining a license to operate pursuant to the requirements of this chapter.

(b) Additional Licenses and Permits May be Required. The license requirement set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or local law, including, by way of example, a retail sales and use tax license, a retail food establishment license or any applicable zoning or building permit.

(c) License Does Not Provide any Exception, Defense or Immunity from other Laws. The issuance of any license pursuant to this chapter does not create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution or possession of marijuana.

(d) Separate License Required for Each Location. A separate license shall be required for each premise from which a recreational marijuana business is operated. No two or more different recreational marijuana businesses may be treated as one premise. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation wall between a recreational marijuana business and any adjacent business.

(e) License Non-Transferable; Exceptions. A recreational marijuana business license is not transferable or assignable, including without limitation, not transferable or assignable to a different premise, to a different type of business (including another marijuana business), or to a different owner or licensee. A recreational marijuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a recreational marijuana business license are only those persons disclosed in the application or subsequently disclosed to the city in accordance with this chapter.

(f) Conversion of Licenses to Different Marijuana Business. A license for a marijuana establishment may not be converted to a license for a medical marijuana business. A license for a medical marijuana business may be converted to the same type of marijuana establishment by complying with the requirements of this chapter for a renewal of a marijuana license and paying the application fee specified in section 4-20-67 of this code.

6-16-4 General Provisions.

- (a) General Licensing Provisions. The general procedures and requirements of licenses, as more fully set forth in Chapter 4-1, "General Licensing Provisions," B.R.C. 1981, shall apply to recreational marijuana business licenses. To the extent there is any conflict between the provisions of this chapter and Chapter 4-1, the provisions of this chapter shall control for recreational marijuana business licenses.
- (b) Defense to Criminal Prosecutions. Compliance with the requirements of this chapter shall not provide an exception, immunity or defense to criminal prosecution under any applicable law, except in the Boulder Municipal Court for a violation of this chapter as specifically provided herein.
- (c) Insurance Required. The insurance specified in section 4-1-8, "Insurance Required," B.R.C. 1981, is required for a license under this chapter.
- (d) Costs of Inspection and Clean-Up. In the event the city incurs costs in the inspection, clean-up, surrender of plants, or any other requirements to remove marijuana of any recreational marijuana business, or any person cultivating, producing, distributing or possessing marijuana, the business and responsible person shall reimburse the city all actual costs incurred by the city for such inspection or clean-up.
- (e) Decisions on Application or Revocation Final. The decision of the city manager on an application for a recreational marijuana business license or revocation thereof pursuant to this chapter shall be the final decision of the city subject only to judicial review pursuant to Colorado Rule of Civil Procedure 106(a)(4), unless the notice of the decision includes an opportunity for a hearing as provided in Section 1-3-3 of this code. No defense or objection may be presented for judicial review unless it is first presented to the city manager prior to the effective date of the decision.
- (f) Forfeiture of License. In the event that a recreational marijuana business does not commence operations within 30 days of issuance of a license from the city, the license shall be deemed forfeited, and the business may not commence operations.
- (g) Landlord Duty. It shall be unlawful for the owner of a building to lease space or allow the use of any portion of the building by a recreational marijuana business unless the tenant has a valid recreational marijuana business license or has applied for and not been denied a recreational marijuana business license or no marijuana is located on the premises until a license has been issued by the city. In the event that the city has an articulable reason to believe that a recreational marijuana business is being operated in a building, it shall be unlawful for the owner of the building to refuse to allow the city access to the portion of the building in which the suspected recreational marijuana business is located to determine whether any marijuana is on the premises.

6-16-5 Application.

(a) **Application Requirements.** An application for a recreational marijuana business license shall be made to the city on forms provided by the city manager for that purpose. The applicant shall use the application to demonstrate its compliance with this chapter and any other applicable law, rule or regulation. In addition to the information required by chapter 4-1, "General Licensing Provisions," B.R.C. 1981, the application shall include the following information:

- (1) Name and address of the owner or owners of the recreational marijuana business in whose name the license is proposed to be issued.
 - A. If an owner is a corporation, the name and address of any officer or director of the corporation and of any person holding issued and outstanding capital stock of the corporation.
 - B. If an owner is a partnership, association or company, the name and address of any person holding an interest therein and the managing members. If a managing member is an entity rather than an individual, the same disclosure shall be required for each entity with an ownership interest until a managing member that is a natural person is identified.
 - C. If an owner is not a natural person, the organizational documents for all entities identified in the application, identification of the natural person that is authorized to speak for the entity and contact information for that person.
- (2) Name and address of:
 - A. Any business managers of the recreational marijuana business, if the business manager is proposed to be someone other than the owner;
 - B. All financiers of the recreational marijuana business; and
 - C. All agents of the recreational marijuana business who either (I) act with managerial authority, (II) provide advice to the recreational marijuana business for compensation, or (III) receive periodic compensation totaling \$1,000 or more in a single year for services related to the recreational marijuana business. It shall be an affirmative defense that the undisclosed person was an attorney, accountant, bookkeeper, mail delivery person, or other contractor performing services for the business that are unrelated to the cultivation, production, or distribution of recreational marijuana.
- (3) A statement of whether or not any of the named owners, members, business managers, financiers, or persons named on the application have been:

- A. Denied an application for a marijuana business license pursuant to this chapter, Chapter 6-14 of this code, or any similar state or local licensing law, rule or regulation, or had such a license suspended or revoked.
 - B. Denied an application for a liquor license pursuant to Title 12, Article 47 or Article 46, C.R.S., or any similar state or local licensing law, or had such a license suspended or revoked.
 - C. Violation of any law, other than a traffic offense, or completed any portion of a sentence due to a violation of any law.
 - D. Convicted of driving or operating other machinery under the influence of alcohol, drugs or medication, driving while impaired or driving with excessive alcohol content in violation of § 42-4-1301, C.R.S., or any comparable law, or a misdemeanor related to abuse of alcohol or a controlled substance.
- (4) Proof of ownership or legal possession of the restricted area for a recreational marijuana business for the term of the proposed license. If the recreational marijuana business is not the owner of the premises of the business, the applicant shall provide written authorization to the city from the owner to enter the property for inspection of the premises on a form approved by the city.
 - (5) Proof of insurance as provided in Section 4-1-8, "Insurance Required," B.R.C. 1981.
 - (6) An operating plan for the proposed recreational marijuana business, including the following information:
 - A. A description of the products and services to be provided by the recreational marijuana business.
 - B. A dimensioned floor plan, clearly labeled, showing:
 - (i) The layout of the structure and the floor plan in which the recreational marijuana business is to be located;
 - (ii) The principal uses of the floor area depicted on the floor plan, including but not limited to the areas where underage persons will be permitted, private consulting areas, storage areas, retail areas, and restricted areas where recreational marijuana will be located;
 - (iii) Areas where any services other than the distribution of recreational marijuana are proposed to occur in the premises; and

- (iv) The separation of the areas that are open to persons who are underage from those areas open to persons qualified to use marijuana.
 - C. A neighborhood responsibility plan that demonstrates how the business will fulfill its responsibilities to the neighborhood, including neighborhood outreach, methods for future communication and dispute resolution.
 - D. For cultivation facilities and recreational marijuana-infused product manufacturers, a plan that specifies the methods to be used to prevent the growth of harmful mold and compliance with limitations on discharge into the wastewater system of the city as set forth in chapter 11-3, "Industrial and Prohibited Discharges," B.R.C. 1981.
 - E. For a recreational marijuana-infused product manufacturer, a plan that specifies all means to be used for extraction, heating, washing, or otherwise changing the form of the recreational marijuana plant, and verification of compliance with all applicable laws for ventilation and safety measures for each process. The city shall require the recreational marijuana business to obtain a report from an industrial hygienist to verify that the plan submitted, and the improvements to be constructed, adequately protect the business and adjacent properties and persons and comply with all applicable laws.
 - F. The maximum amount of marijuana or marijuana-infused products that may be on the business premises.
- (7) A security plan indicating how the applicant will comply with the requirements of this chapter and any other applicable law, rule or regulation. The security plan includes specialized details of security arrangements and will be protected from disclosure as provided under the Colorado Open Records Act, § 24-72-203(2)(a)(VIII), C.R.S. If the city finds that such documents are subject to inspection, it will attempt to provide at least twenty-four-hour notice to the applicant prior to such disclosure.
 - (8) A lighting plan showing the lighting outside of the recreational marijuana business for security purposes and compliance with applicable city requirements.
 - (9) A zoning confirmation form from the city, to ascertain within a radius of one-quarter mile from the boundaries of the property upon which the recreational marijuana business is located, the proximity of the property to any school or other facility identified in this chapter, or state licensed child care center, to any other marijuana business or to any residential zone district or a mixed-use development containing one or more residences.

- (10) Fingerprints and personal histories as may be specified on forms provided by the city manager. This requirement shall apply to all owners, business managers, and financiers employed by or under contract to provide services to the recreational marijuana business, including all individuals who have an interest as described herein of any portion of the recreational marijuana business, directly or as an agent, or a member, partner or officer of a corporation, partnership, association or company, and the reports from the Colorado and Federal Bureaus of Investigation for each person.
 - (11) A plan for disposal of any recreational marijuana or recreational marijuana-infused product that is not sold in a manner that protects any portion thereof from being possessed or ingested by any person or animal.
 - (12) A plan for ventilation of the recreational marijuana business that describes the ventilation systems that will be used to prevent any odor of recreational marijuana off the premises of the business. For recreational marijuana businesses that grow recreational marijuana plants, such plan shall also include all ventilation systems used to control the environment for the plants and describe how such systems operate with the systems preventing any odor leaving the premises. For recreational marijuana businesses that produce recreational marijuana infused products, such plan shall also include all ventilation systems used to mitigate noxious gases or other fumes used or created as part of the production process.
 - (13) A description of all toxic, flammable or other materials regulated by a federal, state or local government that would have authority over the business if it was not a marijuana business, that will be used, kept, or created at the recreational marijuana business, the location of such materials and how such materials will be stored.
 - (14) A description of the process(es) used to extract or distill marijuana from its source and the process used to incorporate marijuana into all products produced, including verifying compliance of all processes regulated by a federal state or local government that would have authority over the business if it was not a marijuana business.
- (b) Evidence of Rehabilitation May Be Submitted. In the event the history of an owner, member, business manager, financier, or other person named on the application contains information regarding violations of any law, or previous denial or revocation of a license, that person may include with the license application any information regarding such violation, denial or revocation. Such information may include, but is not limited to, evidence of rehabilitation, character references and educational achievements, and other regulatory licenses held without compliance violations, especially those items pertaining to the period of time between the applicant's last violation of any law and the date of the application.
- (c) Fee Required. Unless the state has forwarded the application fee pursuant to Colorado Constitution art. XVIII, § 16(5)(g)(II) to the city, the applicant shall submit the application fee

set forth in section 4-20-67, B.R.C., 1981 to the city. In addition to the application fee, in the event a recreational marijuana business license application is approved by the city, such license shall not be issued until the applicant has provided the license fee for the first year of the license in the amount required by section 4-20-67, B.R.C. 1981, and any other applicable fees.

(d) Inspection. An inspection of the proposed recreational marijuana business by the city shall be required prior to issuance of a license. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any recreational marijuana, and prior to the opening of the business to the public. The inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule or regulation.

(e) Complete Application. For purposes of this chapter an application shall not be considered complete until the city manager has (i) determined that all requirements of the application have been provided to the city, (ii) received the reports from the fingerprint cards of each person required to submit such cards from the Colorado and Federal Bureaus of Investigation and (iii) obtained all other information the city manager determines necessary to make a decision whether to approve or deny the license application, or approve it with conditions.

(f) Approval Requirements. The city manager may issue a recreational marijuana business license if the inspection, background checks and all other information available to the city verify that the applicant has submitted a full and complete application, has made improvements to the business location consistent with the application, is prepared to operate the business with other owners and managers as set forth in the application, and has submitted the annual license fee, all in compliance with this Code and any other applicable law, rule or regulation. The city manager will deny any application that does not meet the requirements of this chapter or any other applicable law, rule or regulation or that contains any false or incomplete information. The conditions of an approval of a recreational marijuana business license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

6-16-6 Persons Prohibited as Licensees and Business Managers.

(a) It shall be unlawful for any of the following persons to have an ownership or a financial interest in a recreational marijuana business, and no license provided by this chapter shall be issued to or held by, and no recreational marijuana business shall be managed by:

- (1) Any person until the annual fee for the license has been paid;
- (2) Any person not of good moral character;
- (3) Any corporation, any of whose officers, directors or stockholders are not of good moral character;

- (4) Any partnership, association or company, any of whose officers or members holding an interest therein, or a managing member, are not of good moral character;
 - (5) Any person employing, assisted by or financed in whole or in part by any other person who is not of good moral character;
 - (6) Any person, unless such person's character, record and reputation are satisfactory to the city manager;
 - (7) Any natural person who is under twenty-one years of age;
 - (8) Any person who operates or manages a recreational marijuana business contrary to the provisions of this chapter, any other applicable law, rule or regulation, or conditions imposed on land use or license approvals, or contrary to the terms of the plans submitted with the license application, as such plans may be amended as provided in this chapter, or has operated a business in violation of any law;
 - (9) A person licensed to operate a medical marijuana business pursuant to chapter 6-14, B.R.C., 1981, or a recreational marijuana center pursuant to this chapter;
 - (10) A person licensed to operate more than one recreational marijuana cultivation business or more than one recreational marijuana infused product manufacturing business;
 - (11) A person licensed pursuant to this article who, during a period of licensure, or who, at the time of application, has failed to remedy an outstanding delinquency for taxes owed, or an outstanding delinquency for judgments owed to a government;
 - (12) A sheriff, deputy, police officer, or prosecuting officer, or an officer or employee of the state licensing authority or a local licensing authority;
 - (13) A person whose authority to be a primary caregiver as defined in § 25-1.5-106(2), C.R.S. has been revoked by the state health agency;
 - (14) A person that is a licensee for a location that is currently licensed as a retail food establishment or a wholesale food registrant.
- (b) In making the evaluation of the good moral character of an individual identified on an application or amendment thereof, the city manager shall consider the following:
- (1) An applicant's violation of a law shall not, by itself, be grounds for denying an application;
 - (2) Verification of, or lack of ability to verify, items disclosed by the individual;

- (3) When an individual has a history of violation of any law, or a history including denial, revocation or suspension of a license, the types and dates of violations; the evidence of rehabilitation, if any, submitted by the individual; whether the violations of any laws are related to moral turpitude, substance abuse or other violations of any laws that may directly affect the individual's ability to operate a recreational marijuana business; or whether the violations of any law are unrelated to the individual's ability to operate such a business;
- (4) The evidence or lack of evidence regarding the ability of the individual to refrain from being under the influence of intoxicating or controlled substances while performing regular tasks and operating a recreational marijuana business;
- (5) Rules adopted by the city manager to implement this chapter;
- (6) Law, rules and regulations applicable to evaluation of other types of licenses issued by governments that consider the good moral character of the applicants; and
- (7) Any additional information the city manager may request of the individual if the individual has a violation of any laws, evidence of substance abuse issue, or items disclosed by the individual which require additional information in order for the city manager to make a determination regarding issuance of the license.

6-16-7 Locations of Recreational Marijuana Businesses.

- (a) Fixed Location Required. It shall be unlawful to operate a recreational marijuana business or to grow recreational marijuana outside of an enclosed space that is locked within a building and not visible in a place open to the general public. All recreational marijuana business licenses shall be issued for a specific fixed location within an enclosed building. The portion of such premises upon which the floor plan shows recreational marijuana may be produced, dispensed or possessed shall be considered the "restricted area" portion of the business premises.
- (b) Location – Permitted Use in Zoning District. A recreational marijuana business license may be issued only if the business qualifies as a use permitted as a matter of right in the zone district where it is proposed to be located as follows:
 - (1) as "convenience retail sales \leq 2,000 square feet" for a recreational marijuana center; or
 - (2) as "greenhouse/nursery" for a cultivation facility; or
 - (3) as "manufacturing \leq 15,000 square feet" for a cultivation facility or for a recreational marijuana-infused product manufacturer.
- (c) No Recreational Marijuana Business in Building with Residences or Residential Zone Districts. It shall be unlawful to operate a recreational marijuana business in a building which

contains a residence, or within a dwelling unit within any zone district, or within a residential zone district or on the premises of a development within a mixed-use zone district that includes a residence, as such districts are described in Table 5-1 of section 9-5-2, "Zoning Districts," B.R.C., 1981.

(d) No Retail Sales in Cultivation Facilities or Manufacturing. It shall be unlawful for any person to permit retail sales within a recreational marijuana business that is not a licensed recreational marijuana center facility.

(e) Separation From Schools and Other Facilities. No recreational marijuana business license shall be issued for the following locations:

- (1) Within 1000 feet of any public or private elementary, vocational, secondary school, or a college, university, playground, or facility owned by a city or county housing authority, or a state licensed day care center. Distances shall be measured by the city on official maps as the radius from the closest points on the perimeter of the applicant's property to the closest point of the property of the school or named facility.
- (2) Within 500 feet of three other marijuana businesses, except that this limitation shall not apply in Industrial zones.
 - A. Distances shall be measured by the city on official maps as the radius from the closet points on the perimeter of the applicant's property to the closest point of the property of any other recreational marijuana business.
 - B. To determine the proximity to other recreational marijuana businesses and the priority of applications, businesses shall have priority in the following order:
 - (i) Licensed medical marijuana businesses;
 - (ii) Marijuana establishment;
 - (iii) Businesses whose applications have been approved;
 - (iv) Applications for recreational marijuana business licenses that have been submitted by the applicant and declared complete by the city;
 - (v) No other applications shall be considered "businesses" for this determination.

(f) Limitations on Dual Licenses. A recreational marijuana business license may not be issued for any location which also is a part of the restricted area of a business holding a beverages license pursuant to section 4-2-3, "Authority to Issue City Licenses," B.R.C. 1981 or a marijuana business license under this chapter or chapter 6-14 "Medical Marijuana."

(g) Limitations on Recreational Marijuana Centers. The following shall be the minimum requirements for a recreational marijuana center:

- (1) The area of the business is $\leq 2,000$ square feet, and the restricted area components of the required security and all paper and electronic records are 1,000 square feet or less;
- (2) The business does not sell or distribute anything other than marijuana and marijuana products or marijuana accessories;
- (3) There is a separate reception area for verification of age.

6-16-8 Requirements Related to Operation of Recreational Marijuana Businesses.

(a) Onsite Use Prohibited. No marijuana shall be smoked, eaten or otherwise consumed or ingested within the recreational marijuana business.

(b) Restriction on Access to Restricted Area. No person under twenty-one years of age shall be in the restricted area. No person shall be allowed entry into the restricted area without showing a valid picture ID. The business shall have a scanner approved by the police department to verify the legitimacy of the ID.

(c) Display of Licenses Required. The name and contact information for the owner or owners and any business manager of the recreational marijuana business, the recreational marijuana business license and the sales tax business license shall be conspicuously posted in the business.

(d) Business Conducted Within Building. Any and all cultivation, production, distribution, possession, storage, display, sales or other distribution of marijuana shall occur only within the restricted area of a recreational marijuana business and shall not be visible from the exterior of the business.

(e) Owner or Business Manager Required on Premises. No recreational marijuana business shall be managed by any person other than the licensee or the business manager listed on the application for the license or a renewal thereof. Such licensee or business manager shall be on the premises and responsible for all activities within the licensed business during all times when the business is open or in the possession of another person. In the event the licensee intends to employ a business manager that was not identified on the license or renewal application, the licensee shall report the name of such business manager to the city, and such business manager shall submit to the city, at least thirty days prior to commencing serving as the business manager, an application containing all of the information required by this chapter and on the license application. Such licensee shall report to the city any change in business managers at least thirty days prior to employing an additional business manager, and no more than five days after a business manager is released from such position.

(f) Hours of Operation. A recreational marijuana center shall be closed to the public, and no sale, or other distribution of marijuana shall occur upon the premises or via delivery from the premises, between the hours of 7:00 p.m. and 8:00 a.m.

(g) Use of Pesticides. No pesticides or insecticides which are prohibited by applicable law for fertilization or production of edible produce shall be used on any marijuana cultivated, produced, or distributed by a recreational marijuana business. A recreational marijuana business shall comply with all applicable law regarding use of pesticides including without limitation, chapter 6-10, "Pesticide Use," B.R.C. 1981.

(h) Ventilation Required. A recreational marijuana business shall be ventilated so that the odor of marijuana cannot be detected by a person with a normal sense of smell at the exterior of the recreational marijuana business or at any adjoining use or property.

(i) Renewable Energy Usage Required. A recreational marijuana cultivation facility shall directly offset 100% of its electricity consumption through the purchase of renewable energy in the form of Windsource, a verified subscription in a Community Solar Garden or renewable energy generated onsite, or an equivalent that is subject to approval by the city.

(j) Limitations on Inventory. The recreational marijuana business shall not maintain any more marijuana within the premises than the amount stated on the business' license application to the state and city. No plants shall be located in a recreational marijuana center or a recreational marijuana-infused product manufacturer. In addition, the establishment shall not maintain any more marijuana within the restricted area than:

Cultivation facility: 500 plants or less;

MIP: 600 pounds or less of marijuana that has not been incorporated into a product and 150 pounds of recreational marijuana infused products.

(k) Reporting Requirements. A recreational marijuana business shall report to the recreational marijuana licensing authority each of the following within the time specified. If no time is specified, the report shall be provided within 72 hours of the event.

- (1) transfer or change of financial interest, business manager, or financier in the license to the city at least thirty days before the transfer or change.
- (2) sales and taxable transactions and file sales and use tax reports to the city monthly.
- (3) a violation of any law by any licensee or applicant of a recreational marijuana business.
- (4) a notice of potential violation of any law related to the licensee.

- (5) any report that the recreational marijuana business is required to provide to the state.
 - (6) reports of all criminal activities or attempts of violation of any law at the recreational marijuana business or related thereto shall be reported to the Boulder Police Department within 12 hours of occurrence.
- (l) No Sales Except Directly to User; No Deliveries. All sales of recreational marijuana shall be made in person in the restricted area of a recreational marijuana center. All sales shall be in person, directly to the purchaser. No sales shall be made via telephone, internet or other means of remote purchase. Deliveries shall occur only in person to the purchaser at the time of purchase in the restricted area of a recreational marijuana center.
- (m) Delivery Between Recreational Marijuana Businesses. It shall be unlawful for any person to transport recreational marijuana, except as specifically allowed by applicable law, unless the recreational marijuana being transported meets the following requirements:
- (1) All recreational marijuana-infused products are hand-packaged, sealed and labeled as provided in this chapter and the products stored in closed containers that are labeled as provided in this section.
 - (2) All recreational marijuana in a usable form is packaged and stored in closed containers that are labeled as provided in this section.
 - (3) Each container used to transport recreational marijuana is labeled with the amount of recreational marijuana or recreational marijuana-infused products, or the number and size of the plants, in the container. The label shall include the name and address of the recreational marijuana business that the recreational marijuana is being transported from and the name and address of the recreational marijuana business that the recreational marijuana is being transported to. The label shall be shown to any law enforcement officer that requests to see the label.
 - (4) Unless otherwise specifically allowed by applicable law, recreational marijuana may be transported with proper bill of sale completed before transport only:
 - (A) From a cultivation facility to a recreational marijuana business and which recreational marijuana business is owned by the same person as owns the cultivation facility;
 - (B) Between one recreational marijuana center to another center ;
 - (C) Between a recreational marijuana infused product manufacturer and a recreational marijuana center.

- (5) The recreational marijuana must be accompanied by the manifest and confirmation e-mail from the state in accordance with state requirements for transportation of recreational marijuana.
 - (6) The recreational marijuana must be accompanied by the e-mail receipt confirmation from the Boulder Police Department in accordance with the rules therefore established by the police department.
 - (7) When determining and reporting the route for delivery, licensees should select the most direct route that provides efficiency and safety.
 - (8) Transport may occur only during the hours allowed for operation of the center.
- (n) Disposal of Recreational Marijuana and Marijuana Byproducts. All recreational marijuana and any product containing a usable form of marijuana must be made unusable and unrecognizable prior to removal from the business in compliance with all applicable laws. This provision shall not apply to licensed law enforcement, including without limitation the Boulder Police Department and the Boulder Fire Department.
- (o) Possession of Mature Flowering Plants. No more than one-half of the recreational marijuana plants within a recreational marijuana business or possessed by a person may be mature, flowering plants.
- (p) Advertisement. A recreational marijuana business may not advertise in a manner that is misleading, deceptive, false or is designed to appeal to minors. The following conditions shall apply:
- (1) Except as otherwise provided in this subsection (1), it shall be unlawful for any person licensed under this article or any other person to advertise any recreational marijuana or recreational marijuana-infused product anywhere in the city where the advertisement is in plain view of, or in, a place open to the general public, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device as defined by the zoning code; any sign mounted on a vehicle, any hand-held or other portable sign; or any handbill, leaflet or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property. The prohibition set forth in this paragraph (1) shall not apply to:
 - A. Any sign located on the same zone lot as a recreational marijuana center which exists solely for the purpose of identifying the location of the recreational marijuana center and which otherwise complies with this Code and any other applicable city laws and regulations; or
 - B. Any advertisement contained within a newspaper, magazine, or other periodical of general circulation within the city or on the internet; or

C. Advertising which is purely incidental to sponsorship of a charitable event by a recreational marijuana center or a recreational marijuana- infused products manufacturer.

(2) It is an affirmative defense if a recreational marijuana business employee provided another individual, upon request, a business card for the purpose of providing that person's name and business affiliation, including without restriction title, mailing address, email address, and telephone number.

(q) The owner or a business manager of a recreational marijuana business is required to respond by phone or email within 24 hours of contact by a city official concerning its recreational marijuana business at the phone number or e-mail address provided to the city as the contact for the business. Each 24 hour period during which an owner or manager does not respond to the city official shall be considered a separate violation.

(r) Separation of Cultivation Facility and Recreational Marijuana-Infused Product Manufacturer. A cultivation facility and manufacturer are separate marijuana businesses requiring separate licenses and separate premises. In addition to all other application requirements for separate premises, each business shall

- (1) have separate operations, ventilation, security, and fire suppression systems, and separate access from a public area; and
- (2) be divided within a building from floor to roof. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation between a recreational marijuana business and any adjacent business;
- (3) obtain delivery documents and manifests for movement of any marijuana between the cultivation facility and the manufacturer.

(s) Additional Requirements for Production of Recreational Marijuana.

- (1) No recreational marijuana business may use metals, butane, propane, or other solvent or flammable product, or produce flammable vapors to process marijuana unless the process used and the premises are verified as safe and in compliance with all applicable codes by a qualified industrial hygienist.
- (2) The city shall require the business to obtain verification from a qualified industrial hygienist that the manner in which the business is producing recreational marijuana complies with all applicable laws and does not produce noxious or dangerous gases or odors or otherwise create a danger to any person or entity in or near the businesses.

(t) Packaging at a Recreational Marijuana Center. Provided that recreational marijuana has been delivered to a recreational marijuana center from a cultivation facility packaged and labeled as provided in this chapter, employees at a recreational marijuana center may package and label

any marijuana that results from the sale of recreational marijuana in amounts less than as packaged for delivery to the center.

(u) Packaging of Marijuana-Infused Product. Unless the actual amount of marijuana in a marijuana-infused product is contained on the label of the packaged product, any product over one ounce shall be presumed to have more than one ounce of marijuana in the product.

6-16-9 Right of Entry – Records to be Maintained.

(a) Records to Be Maintained. Each licensee shall keep a complete set of books of account, invoices, copies of orders and sales, shipping instructions, bills of lading, weigh bills, correspondence, bank statements including cancelled checks and deposit slips and all other records necessary to show fully the business transactions of such licensee. Receipts shall be maintained in a computer program or by pre-numbered receipts and use for each sale. The records of the business shall clearly track recreational marijuana product inventory purchased and sales and disposal thereof to clearly track revenue from sales of any recreational marijuana from other paraphernalia or services offered by the recreational marijuana business. The licensee shall also maintain inventory records evidencing that no more recreational marijuana was within the recreational marijuana business than allowed by applicable law. All such records shall be open at all times during business hours for the inspection and examination of the city or its duly authorized representatives. The city may require any licensee to furnish such information as it considers necessary for the proper administration of this chapter. The records shall clearly show the source, amount, price and dates of all marijuana received or purchased, and the amount, price, and dates for all recreational marijuana sold.

(b) Separate Bank Accounts. The revenues and expenses of the recreational marijuana business shall not be commingled in a checking account or any other bank account with any other business or individual person's deposits or disbursements.

(c) Disclosure of Records. By applying for a recreational marijuana business license, the licensee is providing consent to disclose the information required by this chapter. Any document that the applicant considers eligible for protection under the Colorado Open Records Act shall be clearly marked as confidential, and the reasons for such confidentiality shall be stated on the document. In the event that the licensee does appropriately submit documents so as not to be disclosed under the Colorado Open Records Act, the city shall not disclose it to other parties who are not agents of the city, except law enforcement agencies. If the city finds that such documents are subject to inspection, it will attempt to provide at least twenty-four-hour notice to the applicant prior to such disclosure.

(d) Audits. The city may require an audit to be made of the books of account and records of a recreational marijuana business on such occasions as it may consider necessary. Such audit may be made by an auditor to be selected by the city that shall likewise have access to all books and records of the recreational marijuana business. The expense of any audit determined necessary by the city shall be paid by the recreational marijuana business.

(e) Consent to Inspection. Application for a recreational marijuana business license or operation of a recreational marijuana business, or leasing property to a recreational marijuana business constitutes consent by the applicant, and all owners, managers and employees of the business, and the owner of the property to permit the city manager to conduct routine inspections of the recreational marijuana business to ensure compliance with this chapter or any other applicable law, rule or regulation. The owner or business manager on duty shall retrieve and provide the records of the business pertaining to the inspection, including the security tapes from the cameras required by the security plan. For purposes of Rule 241 of the Colorado Rules of Municipal Procedure and Section 2-6-3(e) of this Code, inspections of recreational marijuana businesses and recordings from security cameras in such businesses are part of the routine policy of inspection and enforcement of this chapter for the purpose of protecting the public safety, individuals operating and using the services of the recreational marijuana business, and the adjoining properties and neighborhood, as provided in Section 6-14-1. Application for a recreational marijuana business license constitutes consent to inspection of the business as a public premise without a search warrant, and consent to seizure of any surveillance records, camera recordings, reports or other materials required as a condition of a recreational marijuana license without a search warrant.

(f) Reporting of Source, Quantity and Sales. The records to be maintained by each recreational marijuana business shall include the source and quantity of any marijuana distributed, produced or possessed within the premises. Such reports shall include, without limitation, for both acquisitions from wholesalers and retail sales transactions, the following:

- (1) Date, weight, type of marijuana and dollar amount or other consideration of transaction; and
- (2) For wholesale transactions, the Colorado, and city if any, sales and use tax license number of the seller; and
- (3) The amount of marijuana within the restricted area.

(g) Reporting of Energy Use and Renewable Energy Credit (REC) Purchases. The records to be maintained by each recreational marijuana business that cultivates recreational marijuana shall include without limitation records showing on a monthly basis the use and source of energy and the number of certified Renewable Energy Credits (RECs) purchased, or the subscription level for another renewable energy acquisition program approved by the city manager. Such records shall include all statements, reports or receipts to verify the items included in the report of the business. By application for a recreational marijuana business license from the city, the recreational marijuana business grants permission to providers of the energy or point of origin of the RECs or other renewable energy acquisition program to disclose the records of the business to the city.

6-16-10 Requirements Related to Monitoring and Security of Restricted Areas and Inventory.

All components of the security plan submitted with the application, as it may be amended, shall be in good working order, monitored and secured 24-hours per day. A separate security system

is required for each business. The security plan must include, at a minimum, the following security measures:

- (a) **Cameras.** The recreational marijuana business shall install and use security cameras to monitor and record all areas of the premises (except in restrooms), and where persons may gain or attempt to gain access to marijuana or cash maintained by the recreational marijuana business. Cameras shall record operations of the business to the off-site location, as well as all potential areas of ingress or egress to the business with sufficient detail to identify facial features and clothing. Recordings from security cameras shall be maintained for a minimum of forty days in a secure off-site location in the city or through a service over a network that provides on-demand access, commonly referred to as a “cloud.” The off-site location shall be included in the security plan submitted to the city and provided to the Boulder Police Department upon request, and updated within 72 hours of any change of such location.
- (b) **Use of Safe for Storage.** The recreational marijuana business shall install and use a safe for storage of any processed marijuana and cash on the premises when the business is closed to the public. The safe shall be incorporated into the building structure or securely attached thereto. For recreational marijuana infused products that must be kept refrigerated or frozen, the business may lock the refrigerated container or freezer in a manner authorized by the city in place of use of a safe so long as the container is affixed to the building structure.
- (c) **Alarm System.** The recreational marijuana business shall install and use an alarm system that is monitored by a company that is staffed twenty-four (24) hours a day, seven (7) days a week. The security plan submitted to the city shall identify the company monitoring the alarm, including contact information, and updated within 72 hours of any change of monitoring company.

6-16-11 Requirements for Public Health and Labeling.

- (a) **Recreational Marijuana-Infused Products.** The production of any recreational marijuana-infused product shall be at a recreational marijuana-infused product manufacturer that meets all requirements of a retail food establishment as set forth in § 25-4-1601, et seq., C.R.S., the Food Protection Act. The production of any product containing recreational marijuana shall comply with all health and safety standards thereof. The licensee shall comply with all applicable state and local health regulations related to the production, preparation, labeling and sale of prepared food items as if the recreational marijuana infused products were food items.
- (b) **Labeling and Packaging Requirements.** All recreational marijuana sold or otherwise distributed by the licensee shall be packaged and labeled in a manner that advises the purchaser that it contains marijuana and specifies the amount of marijuana in the product, and that the marijuana is intended for use solely by a person lawfully possessing recreational marijuana. In addition, the label shall be in print large enough to be readable and shall include
 - (1) potential food allergy ingredients, including milk, eggs, fish, shellfish, tree nuts, peanuts, wheat and soybeans;

- (2) all additives used to produce the marijuana-infused product and to extract THC, including, without limitation, solvents and chemicals, and pesticides, herbicides and fertilizers that were used in the cultivation of the recreational marijuana used in the product.

- (3) the following warning:

THIS PRODUCT CONTAINS MARIJUANA. THIS PRODUCT IS MANUFACTURED WITHOUT ANY REGULATORY OVERSIGHT FOR HEALTH, SAFETY OR EFFICACY. THERE MAY BE HEALTH RISKS ASSOCIATED WITH THE INGESTION OR USE OF THIS PRODUCT.

- (c) The product shall be packaged in a sealed container that cannot be opened without obvious damage to the packaging.

6-16-12 Compliance with Other Applicable Law.

(a) Application of State Law. Except as may be provided otherwise in this chapter, or rules adopted pursuant to this chapter or interpretations by the city, any law or regulation adopted by the state governing the cultivation, production, possession or distribution of marijuana for recreational use shall also apply to recreational marijuana businesses in the city. Provided however, if a state law or regulation permits what this chapter prohibits, this chapter shall prevail. Compliance with any applicable state law or regulation that does not permit what this chapter prohibits shall be deemed an additional requirement for issuance or denial of any license under this chapter, and noncompliance with any applicable state law or regulation is unlawful and shall be grounds for revocation or suspension of any license issued under this chapter. No recreational marijuana business shall continue operations in violation of an additional state law or regulation, which does not permit what this chapter prohibits, applicable within the city after the effective date of the state law or regulation.

(b) Revocation of License Upon Denial or Revocation of State License or Applicable Federal Prohibition. If the state prohibits the cultivation, production, possession or other distribution of marijuana through recreational marijuana businesses, or if a recreational marijuana business is denied a recreational marijuana business license or has such license revoked pursuant to § 12-43.3-101, et seq., C.R.S. or if a court of competent jurisdiction determines that the federal government's prohibition of the cultivation, production, possession or other distribution of marijuana through recreational marijuana businesses supersedes state law, any license issued pursuant to this chapter shall be deemed to be immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

(c) Revocable Privilege. A recreational marijuana business license is a revocable privilege, and no applicant therefore or holder thereof shall be deemed to have acquired any property interest therein.

6-16-13 Prohibited Acts.

- (a) Prohibited Acts. It shall be unlawful for any person to:
- (1) Cultivate, distribution, possess, product, smoke, use or ingest marijuana for recreational use in plain view of, or in a place open to the general public.
 - (2) Smoke, use or ingest on the premises of the recreational marijuana business (1) marijuana, (2) fermented malt beverage, (3) malt, vinous and spirituous liquor, or (4) a controlled substance, except in compliance with the directions on a legal prescription for the person from a doctor with prescription writing privileges.
 - (3) Operate or be in physical control of any recreational marijuana business, liquor establishment, vehicle, aircraft or motorboat while under the influence of alcohol or recreational marijuana, or other intoxicant.
 - (4) Possess more than six marijuana plants without a recreational marijuana business license for a cultivation facility.
 - (5) Possess more than one ounce of a usable form of marijuana without a recreational marijuana business license for a center or a recreational marijuana infused product manufacturer.
 - (6) Obtain marijuana for remuneration from a person who is not licensed as a recreational marijuana business.
 - (7) Possess or operate a recreational marijuana business in violation of this chapter.
 - (8) Produce, distribute or possess more recreational marijuana than allowed in this chapter, or than disclosed in the application to the state for a recreational marijuana business license, or other applicable law.
 - (9) Distribute recreational marijuana for remuneration without a recreational marijuana business license or outside of the restricted area of the recreational marijuana business.
 - (10) Possess recreational marijuana, or own or manage a recreational marijuana business, or own or manage a building with a recreational marijuana business, where there is possession of recreational marijuana, by a person who is not lawfully permitted to possess recreational marijuana.
 - (11) Possess or operate a recreational marijuana business in a location or in a manner for which a recreational marijuana business license is prohibited by the terms of this chapter.
 - (12) Operate a recreational marijuana business without a recreational marijuana business license from the city.

- (13) Operate a recreational marijuana business in a manner that is not consistent with the items disclosed in the application for the recreational marijuana business, or is in violation of any plan made part of the license application.
- (14) Operate a recreational marijuana business without disclosing, in the application for a recreational marijuana business license or an amendment thereto, an agent who either (I) acts with managerial authority, (II) provides advice to the recreational marijuana business for compensation, or (III) receives periodic compensation totaling \$1,000 or more in a single year for services related to the recreational marijuana business. It shall be an affirmative defense that the undisclosed person was an attorney, accountant, bookkeeper, or mail delivery person.
- (15) Own or manage a recreational marijuana business where distribution occurs, from a recreational marijuana business of a recreational marijuana-infused product that was produced in a manner that is not in compliance with this chapter.
- (16) Operate a recreational marijuana business without a recreational marijuana business license prior to passing the inspection required by this chapter.
- (17) Make any changes, or for the licensee to allow any changes, to the items included in the plans submitted with the license application and approved by the city, or the individuals identified in the application, without prior approval of the city.
- (18) Attempt to use or display a recreational marijuana business license at a different location or for a different business entity than the location and business entity disclosed on the application for the issued license.
- (19) Own or manage a recreational marijuana business in which another cultivates, produces, distributes or possesses recreational marijuana, in violation of this chapter or any other applicable law.
- (20) Allow an owner or business manager that has not been disclosed to the city as required by this chapter to operate the business.
- (21) Own, manage or possess a recreational marijuana business where recreational marijuana is outside of the restricted area portion of such business.
- (22) Possess a number of flowering plants that is more than one-half of the recreational marijuana plants that are lawfully possessed by a person.
- (23) Dispose of recreational marijuana or any byproduct of recreational marijuana containing marijuana in a manner contrary to this chapter.
- (24) Distribute a recreational marijuana plant to any person.
- (25) Deliver or transport recreational marijuana to a person or between recreational marijuana businesses in a manner contrary to this chapter.

- (26) Refuse to allow inspection of a recreational marijuana business upon request of a city employee. Any licensee, owner, business manager, or operator of a recreational marijuana business, or the owner of the property where a recreational marijuana business is located, may be charged with this violation.
- (27) Advertise or publish materials or display signs that are in violation of this code.
- (28) Violate any provision of this code or any condition of an approval granted pursuant to this code or any law, rule or regulation applicable to the use of recreational marijuana or the operation of a recreational marijuana business.
- (29) Permit any other person to violate any provision of this code or any condition of an approval granted pursuant to this code, or any law, rule or regulation applicable to the use of recreational marijuana or the operation of a recreational marijuana business.
- (30) Lease any property to a recreational marijuana business that has marijuana on the property without a recreational marijuana business license from the city.
- (31) Operate a private club.
- (32) Remove marijuana harvested from a plant from the enclosed locked space where the plant was grown, except as provided in this chapter.

(b) Prima Facie Evidence. Prima facie indicia of impairment or being under the influence of marijuana includes bloodshot eyes, watery eyes, eyelid tremors, green particulate on tongue, dilated pupils, or dry mouth, or any other indicators of impairment.

6-16-14 Suspension or Revocation of License; Imposition of Fines.

(a) A recreational marijuana business license may be suspended or revoked for any of the following violations:

- (1) Conviction of the business, a licensee or any owner, business manager, or financier of any violation of this chapter or any other law, rule or regulation applicable to the use of recreational marijuana or operation of a recreational marijuana business;
- (2) Misrepresentation or omission of any material fact, or false or misleading information, on the application or any amendment thereto, or any other information provided to the city related to the recreational marijuana business;
- (3) Violation of any law by which, if occurring prior to submittal of the application, could have been cause for denial of the license application;
- (4) Distribution of recreational marijuana, including, without limitation, delivery or transporting marijuana, in violation of this chapter or any other applicable law, rule or regulation;

- (5) Operation of a recreational marijuana business in violation of the specifications of the license application, any conditions of approval by the city, or any violation of this chapter or any other law, rule or regulation applicable to the use of recreational marijuana or operation of a recreational marijuana business;
 - (6) Failure to maintain, or provide to the city upon request, any books, recordings, reports or other records required by this chapter;
 - (7) Failure to timely notify the city and to complete necessary city forms for changes in financial interest, business managers, financier or agent;
 - (8) Temporary or permanent closure, or other sanction of the business, by the city, or by the county or State Public Health Department or other governmental entity with jurisdiction, for failure to comply with health and safety provisions of this chapter or otherwise applicable to the business or any other applicable law;
 - (9) Revocation or suspension of another recreational marijuana business license or any other license issued by the city, the state, or any other jurisdiction held by any licensee of the recreational marijuana business;
 - (10) Failure to timely correct any violation of any law, or comply with any order to correct a violation of any law within the time stated in the notice or order.
- (b) In the event a business or licensee is charged with violation of any law, upon which a final judgment would be grounds for suspension or revocation of the license, the city may suspend the license pending the resolution of the alleged violation.
- (c) Civil Penalties for violations of this chapter may be imposed by the city against the business or any licensee up to \$5,000 per licensee per occurrence.
- (d) If the city revokes or suspends a license, the business may not move any marijuana from the premise except under the supervision of the Boulder Police Department.

6-16-15 Term of License – Renewals – Expiration of License.

- (a) **Term of License.** A recreational marijuana business license shall be valid for one year. The license shall expire on the last day of the month in which the license is issued of the year following issuance or renewal of the license. For the first license issued for a recreational marijuana business, the city manager may designate an expiration date in excess of one year, but no more than twenty-four months, to facilitate the administration by the city of renewals of such licenses.
- (b) **Renewal of License.** The licensee shall apply for renewal of the recreational marijuana business license at least forty-five days before the expiration of the license. The licensee shall apply for renewal using forms provided by the city. If the applicant fails to apply for renewal at least 45 days before the expiration of the license, but does apply for renewal prior to expiration

of the license, the city may process the renewal application if the application submits a late filing fee of \$5,000 at the time of submittal of the renewal application.

- (1) The renewal license fee, and late fee if applicable, shall accompany the renewal application. Such fee is nonrefundable.
- (2) In the event there has been a change to any of the plans identified in the license application which were submitted to and approved by the city with the application or an earlier renewal, the renewal application shall include specifics of the changes or proposed changes in any of such plans.
- (3) In the event any person who has an interest as described in the disclosures made to the city pursuant to this chapter, or any business manager, financier, agent as defined herein or employee has been charged with or accused of violations of any law since such disclosure, the renewal application shall include the name of the violator, the date of the violation, the court and case number where the violation was filed and the disposition of the violation with the renewal application.
- (4) In the event the business license has been suspended or revoked or a licensee has received any notice of violation of any law, the renewal application shall include a copy of the notice, suspension, or revocation.
- (5) The renewal application shall include verification that the business has a valid state license and the state license is in good standing.
- (6) The renewal application shall include a summary report for the previous twelve months showing the amount of marijuana purchased, the amount of marijuana sold, the forms in which marijuana was sold, the police report numbers or case numbers of all police calls to the recreational marijuana business, and for calls resulting in a charge of a violation of any law, the charge, case number and disposition of any of the charges.
- (7) The city shall not accept renewal applications after the expiration of the license, but instead shall require the applicant to file a new license application.
- (8) In the event there have been allegations of violations of this code by any of the licensees or the business submitting a renewal application, the city may hold a hearing pursuant to chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, prior to approving the renewal application. The hearing shall be to determine whether the application and proposed licensees comply with this chapter and whether the operation of the business has been in compliance with this code. If the city does not hold a hearing and the application and the licensees do not meet the requirements of this chapter, or the business has been operated in the past in violation of this code, the renewal application may be denied or issued with conditions, and the decision shall be final subject to judicial review as provided in Section 16-4-4(e).

(c) Nonpayment of Tax. In the event a recreational marijuana business that has been open and operating and submitting monthly sales and use tax returns to the city ceases providing sales and use tax returns to the city for a period of three months or longer, the recreational marijuana business license shall be deemed to have expired and a new license shall be required prior to reopening at the location of the business.

(d) Expiration of License. Expiration of a recreational marijuana business license for any reason including without limitation, pursuant to subsection (c) above shall be considered an inactive local license as described in § 12-43.3.312, C.R.S.

6-16-16 City Manager Authorized to Issue Rules.

The city manager may adopt rules and regulations that the city manager determines are reasonably necessary to implement the requirements of this chapter.

Section 2. A new section 4-20-67, B.R.C. 1981, is added to read:

4-20-67 Recreational Marijuana Businesses.

Application and license fees for recreational marijuana businesses shall be up to the following amounts:

- | | | |
|-----|---|-----------------|
| (a) | Application fee for licensees under chapter 6-14,B.R.C. 1981: | \$500 |
| (b) | Application fee for all others: | \$4,500.00 |
| (c) | Criminal background check fee, per person checked: | Actual
Costs |
| (d) | License fee, per year: | \$_____ |
| (e) | Renewal application fee, per year: | \$_____ |
| (f) | Renewal license fee, per year: | \$_____ |
| (g) | Application for a new business manager: | \$150.00 |
| (h) | Business entity changes or addition of financiers: | \$2,000.00 |
| (i) | Modification of premises: | \$3,000.00 |

The application fee and costs paid are nonrefundable. The license fee may be refunded if the license application is denied. Neither the application fee nor the license/renewal fee will be refunded in the instance of suspension or revocation.

Section 3. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 4. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 5th day of March 2013.

Attest:

Mayor

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this ____ day of _____, 2013.

Attest:

Mayor

City Clerk

Appendix B: Municipal Actions & Elections

Table 6: Recreational Marijuana Prohibition, Regulation and Taxation: 2012-February 2013

Municipality	Type of Issue	2012	2013
Aurora	Ordinance to comply with Amendment 64 age, grow, and possession provisions.		ADOPTED-
Blanca	Prohibition of marijuana cultivation, product manufacturing, testing facilities, and retail marijuana stores.		ADOPTED^
Carbondale	Moratorium on the establishment of any new medical or retail marijuana facility to 12/11/2013	ADOPTED	
Cherry Hills Village	Prohibition of marijuana cultivation, product manufacturing, testing facilities, and retail marijuana stores.		ADOPTED^
Craig	Ordinance to comply with Amendment 64 age provision. Moratorium on the use or consumption of marijuana or marijuana products on commercial and industrial zoned property that operates as a place of private assembly for the purpose of inviting persons to use or consume marijuana products on site (pot clubs) to 03/23/2013.	ADOPTED-	ADOPTED
Del Norte	Prohibiting the operation of all Marijuana Cultivation Facilities, Marijuana Manufacturing Facilities, Marijuana Testing Facilities or Retail Marijuana Store, and Private Membership Marijuana Clubs and Hash Bars.		ADOPTED^
Englewood	Moratorium on the establishment of any new business which sells, manufactures or cultivates marijuana to 07/31/2013	ADOPTED	
Foxfield	Prohibition of marijuana cultivation, product manufacturing, testing facilities, and retail marijuana stores.		ADOPTED^
Fruita	Moratorium on private marijuana clubs to 03/16/2013		ADOPTED
Greenwood Village	Prohibition of any marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, or retail marijuana store or marijuana club within the City; indoor cultivation regulations.		ADOPTED^
Gunnison	Ordinance to comply with Amendment 64 age, grow, and possession provisions.	ADOPTED-	
Johnstown	Prohibition of marijuana cultivation, product manufacturing, testing facilities, and retail marijuana stores.		ADOPTED^

Appendix B: Municipal Actions & Elections

Table 6: Recreational Marijuana Prohibition, Regulation and Taxation: 2012-February 2013

Municipality	Type of Issue	2012	2013
Lafayette	MORATORIUM ON THE SUBMISSION, ACCEPTANCE OR PROCESSING OF APPLICATIONS AND THE LICENSING, PERMITTING, ESTABLISHMENT OR OPERATION OF ANY RECREATIONAL MARIJUANA BUSINESS to 10/01/2013		ADOPTED
Montrose	Moratorium on review of applications for retail dispensaries of recreational marijuana to 05/03/2013	ADOPTED	
Monument	Prohibition of marijuana cultivation, product manufacturing, testing facilities, and retail marijuana stores; unlawful to grow marijuana for personal use anywhere in the Town other than an enclosed, locked space which is not open or public; unlawful to make marijuana grown for recreational use available for sale in any manner Ordinance to comply with Amendment 64 age and possession provisions. Prohibit the use of marijuana in private clubs, lodges, and similar facilities		ADOPTED^ ADOPTED- ADOPTED^
Norwood	Moratorium on the operation of marijuana establishments pursuant to Amendment 64 to 10/01/2013	ADOPTED	
Palisade	Prohibition on private marijuana clubs.		ADOPTED^
Parker	Prohibition of marijuana cultivation, product manufacturing, testing facilities, and retail marijuana stores.	ADOPTED^	
Steamboat Springs	Moratorium on any business that permits or invites private assembly for the purpose of the use or consumption in any manner of marijuana or marijuana products in any form to 05/05/2013		ADOPTED
Thornton	Prohibition of marijuana cultivation, product manufacturing, testing facilities, and retail marijuana stores.		ADOPTED^
Vail	Moratorium on the operation of marijuana establishments pursuant to Amendment 64 to 08/06/2013		ADOPTED
Westminster	Prohibition on retail sale, distribution, cultivation and dispensing of recreational marijuana through marijuana establishments and optional premises cultivation operations.		ADOPTED^

Appendix B: Municipal Actions & Elections

Table 6: Recreational Marijuana Prohibition, Regulation and Taxation: 2012-February 2013

Municipality	Type of Issue	2012	2013
	Ordinance to comply with Amendment 64 age, grow, and possession provisions.		ADOPTED-
Woodland Park	Moratorium on the operation of marijuana establishments pursuant to Amendment 64 to 07/01/2013	ADOPTED	
TOTALS	Local Opt-Out Ballot Questions Results: Prohibit:	0	0
	Allow:	0	0
	Totals	0	0
	Council Action to Prohibit	1	11
	Council Action to Regulate	0	0
	Council Action to comply with Amendment 64:	2	3
	Totals	3	14
	Moratoria	5	5
	CUMULATIVE <u>ELECTION</u> TOTALS:	CUMULATIVE <u>COUNCIL ACTION</u> TOTALS: (Retail)	
	Prohibit 0	Prohibit 12	
	Regulate 0	Regulate 0	
	#DIV/0!	TOTAL 12 (100% prohibition rate)	

^ Prohibition of marijuana establishments/private clubs pursuant to Amendment 64 adopted by council action

+ Regulation of marijuana establishments/private clubs pursuant to Amendment 64 adopted by council action

- Amend the municipal code to comply with Amendment 64 by council action

This Page Intentionally Left Blank



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 5, 2013

AGENDA TITLE: Discussion of Reduced Recreation Center Fees for Low Income Children and Youth Who Reside in City Enclaves

PRESENTER/S

Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Kirk Kincannon, Director, Parks and Recreation

EXECUTIVE SUMMARY

Council Member Becker asked for this matter to be placed on the council meeting agenda for consideration of a “nod of 5” to have staff work on a plan to provide a discount for low income youth who live in a North Boulder enclave. Council Member Becker was approached by a parent from Foothills Elementary School. Foothills parents run a program called “Sports for All” which works to provide sports opportunities for children at the school whose families’ incomes would otherwise preclude such participation. A parent also spoke about the program during open comment at the February 19, 2013 council meeting. Information about the program is available at <http://www.foothillpto.com/sports4all.html>. Fifteen of the children in the program live in the Ponderosa Mobile Homes Park in North Boulder. This mobile home park is an enclave of unincorporated Boulder County completely surrounded by the city. Recreation Center fees are as follows:¹

Age	Daily	10 - Punch		20 - Punch		40 - Punch		Annual	
Senior (60+)	\$5.25	\$47(R)	\$51(N)	\$89(R)	\$99(N)	\$168(R)	\$185(N)	\$353(R)	\$445(N)
Adult (19-59)	\$7	\$63(R)	\$69(N)	\$119(R)	\$131(N)	\$224(R)	\$247(N)	\$552(R)	\$645(N)
Youth (3-18)	\$4.50	\$40(R)	\$45(N)	\$76(R)	\$84(N)	\$144(R)	\$159(N)	\$260(R)	\$330(N)
Family²	n/a	n/a	n/a	n/a	n/a	n/a	n/a	\$885(R)	\$1,075(N)

¹ “R” indicates fees for residents and “N” indicates fees for non-residents.

Parks and Recreation provides reduced rates to low income residents of the city. Residents who are eligible for the city's food tax rebate program can apply to receive reduced rates. In addition, residents may qualify if they live in properties managed by Boulder Housing Partners, qualify for Medicaid, participate in the Colorado Health Plan, or have proof of a disability. This program is not available to non-residents. Eligible individuals can get a fifty percent reduction in drop-in rates to recreation centers, the Boulder Reservoir and outdoor pools. Reduced rates can be applied to drop-in fees, punch passes or on the annual pass (including monthly payment option).³

Annexation would make the residents of the Ponderosa Mobile Home Park residents of the city and therefore eligible for city programs. In the early 1990s, the city undertook a project to annex unincorporated areas in North Boulder. At the December 19, 1995 council meeting staff proposed that council consider annexing and purchasing the Ponderosa Mobile Home Park. A copy of the Agenda Memorandum presented to council is attached as Attachment A. Some of the key facts in the memorandum were as follows:

- The property receives out of city water and sewer.
- The property is completely surrounded by the city. It is a county enclave that is eligible to be annexed by the city pursuant to unilateral action or by petition.
- The property needs additional fire hydrants, paving of private drives, public road paving, new water lines and sewer lines, and moving natural gas service lines that were under some of the units.
- There were fees that would be due upon annexation.
- Development deficiencies included: The need to improve to the interior circulation of the park, reconfiguration of electrical lines; gas line hookups into units, and improvements to mobile homes which do not meet rental licensing or housing codes.
- Some units were identified as needing to be replaced.
- The density within the park exceeded the desired 10 dwelling units per acre for a mobile home zone.
- Many of the homes have additions that may not meet building code requirements.
- At one point, there was a two acre vacant parcel associated with the mobile home park. It has since been sold to a third party and is being redeveloped under the address 1000 Rosewood. It was annexed and is being developed by Thistle.

Council authorized staff to negotiate for purchase and annexation. It appears that these negotiations failed, but there does not appear to be any record of the reason. It would be possible for the city to annex the Ponderosa Mobile Home Park without purchasing the facility. Some commitment of city funds would be necessary to bring the infrastructure up to city standards.

² Family=Two adults and all dependant youth (18 and under) and seniors (ages 59+) living in the same household. Additional adults will be charged an additional 20 percent of pass cost. Some restrictions apply.

³ Applicants 18 years of age and older must complete an affidavit of legal U.S. residency.

ANALYSIS

It is possible for the city to provide a limited waiver of certain fees to low income non-residents. The city manager has broad authority to set fees, under § 8-3-8(b) B.R.C., 1981 and §4-20-41(h) & (i) B.R.C. 1981, which includes waiving the non-resident fee or setting fees for city-run programs. In addition to the low income fee program described above, Parks and Recreation partners with the PLAY Foundation to raise money to provide scholarship funds for youth and adults with low-incomes. The department distributes the funds based on financial need. The department provided approximately \$1,200 in scholarships for youth in 2012. The department provided 18% of these funds to non-resident students at Foothills Elementary.

Although it is possible to provide this benefit, there is a significant question regarding the scope. It may be difficult to articulate a rational basis for providing a benefit to non-resident low income youth in a single mobile home park. It would be difficult to explain why such a benefit is not available to residents of other enclaves or even to individuals living in other unincorporated areas of Boulder County outside of the city limits. If council seeks to proceed, staff recommends that this issue be part of the Parks and Recreation master planning process. The department is currently engaged in updating its master plan and some of the emerging themes are related to youth engagement, and community health and well-being. Providing enhanced access to recreation activities for youth is a goal that can be addressed by the policies, action strategies and future work items that are identified as a result of the master plan.

Staff also recommends that any program for additional discounts be implemented after through the budget process. Parks and Recreation should be permitted to make any necessary adjustments necessary to account for any lost income.

ATTACHMENTS

Attachment A: Copy of the Agenda Memorandum December 19, 1995

DEC 19 1995

**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM****MEETING DATE:** December 19Agenda Item Preparation **DATE:** December 10, 1995**AGENDA TITLE:** A proposal for the acquisition of the Ponderosa Mobile Home Park.**REQUESTING DEPARTMENT:** Housing and Human Services**FISCAL IMPACT:** Total acquisition and improvements are estimated at \$1.6 million. There is no direct impact to the General Fund: there is a request pending for Housing Funds.**PURPOSE:**

The purpose of this memo is to describe a proposal to acquire, annex and make improvements to the Ponderosa Mobile Home Park. Staff is seeking Council direction to pursue negotiations for acquisition of the Ponderosa Mobile Home Park. Prior to finalizing a purchase agreement, staff will provide Council with total projected cost estimates and improvement phasing plan. The Council will have an opportunity to review and approve any purchase agreement prior to its execution.

BACKGROUND:

The Council has indicated an ongoing interest in retaining mobile home parks as affordable housing options. This has included resident-owned parks, lease/purchase options and/or acquisition of a mobile home park by either the City or a nonprofit organization. Approximately four years ago, residents of Ponderosa initiated a proposal to acquire the park. They applied for funding and were awarded \$50,000 from CDBG to further this effort. In addition, the Planning Department hired a consultant to determine the improvements that would be needed as part of annexation. We also contracted with Thistle Community Housing to work with residents to determine the steps needed to acquire the park. This included assessing interest in owning the park, financial feasibility and ownership options.

Since 1991, staff has met with the owner's representative, Vince Porreca, to resolve annexation issues related to Ponderosa. We also discussed the idea of acquiring the park through some form of a lease/purchase or master lease.

The owner indicated that he was interested in master leasing the site through his representative. Under this concept, the City would lease the park and sublease pads to tenants for an agreed upon period of time. Staff did not pursue this arrangement because permanent affordability could not be assured. Also, we determined that at the end of a ten to a fifteen-year term, the lease payments would have paid most of the principal and interest on a standard note. Council indicated an interest in pursuing resident-owned and managed mobile home park initiatives at the March 1995 Housing Study Session. It was at this point that staff began considering how to acquire the park, with the goal of turning it into a resident-owned and managed park.

PROPOSAL:

With the assistance of the Open Space and Real Estate Department, the City Attorney's Office and the Public Works Department, a proposal was crafted to acquire the 67 unit mobile home park for \$800,000. An option to purchase the vacant two acres west of the site for \$144,000 was also included. The owner has indicated a willingness to entertain such a proposal. However, he would like to know if staff has Council support prior to initiating serious negotiations. The highlights of the proposal are listed below.

1. The City would acquire the park through a lease purchase with the BMPA, under which the owner would carry back a non-recourse note for up to ten years. The note payments would be paid from the rents collected at the park. There may be tax advantages to the seller through this method of payment, which the seller would need to confirm with his tax professional.

The proposal stipulates that the seller would carry a note in the amount of \$630,000 at a 7% interest rate with a 30-year schedule. A balloon payment would be due in nine years, and could be prepaid without a penalty. The residents would secure financing and pay the outstanding principal on the note. The expectation is that the note would be paid sooner than the 10-year term.

2. The City would proceed with annexation and make the improvements needed to meet the annexation requirements. These improvements include installation of two fire hydrants, paving of the private drives, road paving along Rosewood and the Violet/Ninth Street extension, installing a water line, resizing the sewer lines in public rights of way, and sizing and installing natural gas lines. In addition, park fees will have to be paid at the time of annexation.
3. Improvements that need to be addressed, but could be phased in over time include: improvements to the interior circulation of the park, reconfiguration of electrical lines and gas line hookups into units, and improvements to mobile homes which do not meet rental licensing or housing codes. An estimated ten units may need to be replaced at an additional cost of \$225,000. This will require extensive work with residents about the types of improvements that have to be made and could involve the relocation of some of the mobile homes to lower the density of the site to meet the desired 10 dwelling units per acre for a mobile home zone. It is expected that, if negotiations are successful, residents of units to be moved for these improvements could be relocated to the vacant two acres.

The total estimated costs of these improvements and fees are \$314,000. Bid estimates will be obtained prior to finalizing a purchase agreement.

4. Thistle Community Housing has agreed to assist residents in evaluating ownership options such as a cooperative housing association, or community land trust, provide home ownership counseling and related tasks and skills. It is expected that residents could be prepared to assume ownership in three to five years. Through financing arranged by the residents, the seller would be paid and the City would not be responsible for paying the balance remaining on the note at that time. During the City's ownership, a private management firm would provide ongoing management services. This is the approach used at the Branding Iron Mobile Home Park.
5. The total estimated cost of the project is approximately \$1.6 million. This includes acquisition, improvements, replacement of some units, replacement reserves, financing and funds to pay project consultants. This translates into an estimated per unit cost is \$24,000 for 67 homes; including the replacement of ten units. However, the estimates for the infrastructure improvements and replacements are five years old and we are in the process of making current estimates as well as a phasing schedule.

If City funds were allocated to this project, they would pay for infrastructure improvements and replacement of some of the mobile homes. The amount of City funds needed has been estimated at \$7,194 per unit, or \$462,000. Again, this estimate is subject to change based upon a contemporary estimate of the infrastructure improvement costs. Staff anticipates applying for these funds from available Division of Housing funds.

Staff is also prepared to submit an application to the Colorado State Division of Housing for \$347,500 in HOME funds. These funds would be used for acquisition and some resident services. The State is more likely to allocate dollars when a commitment of local dollars has been made.

6. The note and operating expenses can be paid from rents collected at the site; rents have been projected to increase by 4% per year.
7. The CHAP Review Group raised concerns about the City's liability should such a project be undertaken. We have been advised by the City Attorney's Office that the Governmental Immunity Act would limit liability of the City for any claim of negligent operation of the park. The park would be covered under the City's self-insurance program and a cost for this was included in the operating pro-forma.

WHY SHOULD THE CITY BE INVOLVED?

1. The City will assure that the property is rehabilitated, yet retain affordability to working households.

2. While the City owns the property, property taxes are not paid. These savings will be used to develop replacement and operating reserves that are likely to be required by a permanent lender.
3. It is possible that the owner could redevelop the site with higher end mobile homes, or sell to someone who would also upgrade the site. This could result in a loss of 67 mobile homes where more than 80 percent of the residents earn less than 40 percent of the Area Median Income. It could also result in a loss of approximately 30 families with children, most of whom have been residents of Boulder for at least five years.

CRITICAL RISKS AND ASSUMPTIONS:

Acquisition of Ponderosa is not without some risk. Some of these include:

1. *Liability.* The project would be covered by the City's self insurance program. This cost has been included in the pro forma. Also, the City Attorney's Office has advised us that the City would be protected under governmental immunity for some dangers. The major liability would be if improvements were not made properly. In this case, solid contracts with companies who perform the work and careful inspections will be needed.
2. *Zoning.* Ponderosa has commercial and medium density zoning in the County. The North Boulder Sub-Community Plan indicates this site will have mobile home zoning upon annexation. All discussions with the owner regarding annexation have been clear that this would be the City's zoning for the site. The risk is that the owner would try to redevelop the site in the County. Staff is following up with the County to find out why this site was not zoned Mobile Home and what steps need to be taken to ensure this zoning is put into place, if negotiations for acquisition by the City fail.
3. *Code.* Many residents have built additions to their mobile homes. In order to determine if the additions meet code, inspections will have to be conducted and a course of action agreed upon regarding whether or not the additions could be left, meet code or require improvements. Many rental units may require substantial improvements or need to be replaced. Staff have not met with the owners of the rental units to determine their interest in making improvements or remaining in the park.
4. *Cost of Improvements.* Preliminary cost estimates for making improvements have been based on similar work. Until the work is bid out, however, costs cannot be finalized. If Council indicates a willingness to proceed with the acquisition, staff will send the proposal through the DRC process to identify zoning and related issues. In addition, staff will finalize the improvements needed for the park, the individual units and prepare an improvement phasing plan. Once an option is negotiated, staff will proceed to get final cost estimates and include them with the final proposal for Council consideration. This will be done prior to executing a purchase contract.

5. *Loan Repayment.* The City will be responsible for paying the loan from rents generated at the park. The preliminary cash flows indicate there is sufficient revenue to pay operating expenses and debt service. It is unknown if residents will be able to qualify for a new loan in an amount sufficient to pay the remaining loan balance. Staff projections indicate that, barring any unusual occurrences in the market, a new loan with 25% equity could be obtained to pay the outstanding balance.

If residents were unable to qualify for a new loan in five years, the City would have to look to sell the property to another buyer. We would try to negotiate an agreement with an organization such as the Housing Authority or Thistle Community Housing, who have a stated purpose to provide affordable housing for low income households. Even if the property were put on the open market, it would carry the permanent affordability restriction.

6. *Future Financing.* Residents have indicated that they would like to proceed with the acquisition of the park much faster than the five-year time frame proposed by the City. We are delighted with this enthusiasm and recognize that it is possible for residents to be in a position to buy the park in two years. Until serious negotiations can be undertaken with the seller, one unknown is if prepayment of the note would be acceptable to the seller or if the note could be transferred to the residents.

SUMMARY:

The City of Boulder has a history of pursuing policies and programs which result in a range of affordability for its citizens. Mobile Home Park issues are coming into focus. Residents of these parks are in the unenviable position of owning their unit, but not the ground upon which it rests. Park owners are beginning to put these properties on the market. As this occurs, new owners are likely to raise rents, forcing mobile home residents to relocate or abandon their units. It is possible that Ponderosa could be put on the open market. A new owner may upgrade the park, and the rents as well, thereby forcing many Ponderosa residents to find other housing options that are affordable. Clearly there are some risks associated with acquiring this park, but there is also the opportunity to make improvements, retain affordability and test the concept of resident ownership.

STAFF RECOMMENDATION:

Staff recommends that Council direct staff to continue pursuing the acquisition of the Ponderosa Mobile Home Park as described in this memo.

Approved by:



Stephen T. Honey
City Manager

Council Working Agreements

Council Process:

- The Council will work on general discipline in being prepared to ask questions and make comments.
- The Council asks the Mayor to intervene if discussion on agenda items extends beyond a reasonable time frame.
- The council will engage in the practice of colloquy to fully explore the different sides of a specific point.
- The Mayor will ask the city clerk to set the timer lights for council members if discussions begin to exceed efficient debate. Members should respect the lights as a time reminder, but will not be bound by them as absolute limits.
- Rather than restating a point, council members should simply say "I agree."
- The council agenda committee may, with advance notice, adjust each public speaker's time to two rather than three minutes during public hearings for items on which many speakers want to address the council.
- Council members will grant each other permission to mentor and support each other on how each person contributes to the goal of being accountable for demonstrating community leadership.
- In order to hear each other respectfully and honor the public, council will avoid body language that could convey disrespect, side conversations, talking to staff, whispering to neighboring council members, passing notes, and leaving the council chambers.
- Regarding not revisiting past discussions, the council should check-in with fellow members periodically to ensure that this is not an issue.

Council Communication:

- Council members agree to keep quasi-judicial roles scrupulously clean between members of boards and members of council, like expressing ideas to board members on things coming before the Board, and carefully disclose or recuse themselves when they're involved with board members on a topic.
- Council agrees to e-mail the city manager about issues that they run into that staff or boards may be working on so that the manager can be actively involved in managing issues and keeping the full council informed well in advance of items coming before council for action.
- Members will keep the full council informed on issues from committees, public groups or other agencies that they are following, the a hot line e-mails, brief verbal reports at the end of council meetings or other means.
- The Council will find ways to support majority council decisions and adequately inform the public, through response letters that explain how divergent points of view were heard and honored in decisions, via standard e-mail responses for hot issues, by occasional council Letters to the Editor to clarify the facts, or by seeking out reporters after meetings to explain controversial decisions.

Council Committees

- Council goal committee meetings will be scheduled to accommodate the council members on the committee.
- Notice of the times and places for each goal committee meeting will be noticed once per month in the Daily Camera.
- The council agenda will include time for reports from committees under Matters from Members of Council, noting that written communications from the committees are appropriate as well.

This Page Intentionally Left Blank

Date	Status	Topic	Time	Televised	Location	Contacts	Materials Due
Key		Dinner					
Key		Event Before 5 PM					
Key		Tentative Item					
03/07/13		Boards and Commissions Interviews	6-9 PM	NO	1777 West	Dianne Marshall	N/A
03/12/13		Boards and Commissions Interviews	6-9 PM	NO	Chambers	Dianne Marshall	N/A
03/14/13		Boards and Commissions Interviews	6-9 PM	NO	1777 West	Dianne Marshall	N/A
03/15/13		Special Meeting: Board and Commission Appointments	8-9 AM	YES	Chambers	Alisa Lewis	N/A
03/26/13		No Meeting					
04/02/13		Boards and Commissions Reception with Council	5-6 PM	NO	Muni Lobby	Dianne Marshall	N/A
04/09/13		Transportation Finance (TMF)	6-8 PM	NO	Chambers	Chris Hagelin Laurel Olsen-Horen	03/28/13
04/09/13		Winter Storm/Snow Response	8-9 PM	NO	Chambers	Felix Gallo Laurel Olsen-Horen	03/28/13
04/09/13		YOAB Dinner with Council	4:45-6	NO	Muni Lobby	Dianne Marshall	N/A
04/23/13		Budget Update, Revenue Update and Ballot Measures	6-7:30 PM	YES	Chambers	Eric Nickell	04/11/13
04/23/13		Police & Fire Old Hire Pension Plans	7:30-9:30 PM	NO	Chambers	Eric Nickell	04/11/13
04/30/13		Dinner: Police Staffing Analysis	4:30-6 PM	No	Chambers	Laurie Ogden	
04/30/13		Assessment of Boulder Access and Parking Management Strategies	6:00-8:00 PM	NO	Chambers	Molly Winter Ruth Weiss	04/18/13
04/30/13		Climate Action Update	8:00-9:00 PM	NO	Chambers		04/11/13

Date	Status	Topic	Time	Televised	Location	Contacts	Materials Due
05/14/13		Energy Roundtable	4:30-5:30 PM	NO	Chambers	Heather Bailey Heidi Joyce	N/A
05/14/13		Comprehensive Community Housing Strategy	6-9 PM	NO	Chambers	Eric Aameigh/Melinda Melton	05/02/13
05/28/13		Sister City Dinner	4:30-6		Chambers	Ali Darrow	
05/28/13		Human Services Overview	6:00-8:00 PM	NO	Chambers	Randall Roberts Karen Rahn	
05/28/13		Parks and Recreation Master Plan	8:00-9:00 PM	NO	Chambers	Kirk Kincannon Sally Dieterich	05/16/12
06/11/13		Work Plan Update	6-7 PM	NO	Chambers	Paul Fetherston	05/30/13
06/11/13		City Manager's Office - HOLD	7-9 PM				05/30/13
06/25/13		No Meeting					
07/09/13		No Meeting					
07/23/13		Civic Area Plan	6:00-7:30 PM	NO	Chambers	Leslie Ellis Sam Assefa	07/11/13
07/23/13			7:30-9:00 PM				
07/30/13		TMP Transit System Design	6-7:30 PM	NO	Chambers	Randall Rutsch Laurel Olsen-Horen	07/18/13
07/30/13		Boulder's Energy Future	7:30-9 PM	NO	Chambers	Heather Bailey Heidi Joyce	07/18/13
08/13/13		CIP	6-9 PM	YES	Chambers	Eric Nickell	08/01/13
08/27/13		Parks and Recreation Master Plan	6-7:30 PM	YES	Chambers	Kirk Kincannon Sally Dieterich	08/15/13
08/27/13		Boulder's Energy Future	7:30-9 PM			Heather Bailey Heidi Joyce	
09/10/13		Recommended Budget #1	6-9 PM	YES	Chambers	Eric Nickell	08/29/13
09/24/13		Recommended Budget #2 Remaining Overarching Issues with OSBT	6-9 PM	NO	Chambers	Eric Nickell Mark Gershman Cecil Fenio	09/12/13
10/08/13			6-9 PM				09/26/13
10/22/13		TMP Update on Focus Areas	6-7:30 PM	NO	Chambers	Randall Rutsch Laurel Olsen-Horen	10/10/13
10/22/13		Zero Waste Management Update	7:30-9 PM	NO	Chambers	Kara Mertz Melinda Melton	10/10/13
10/29/13		Cultural Master Plan Update	6:00-7:30 PM	NO	Chambers	Valerie Maginnis Leanne Slater	10/17/13
10/29/13			7:30-9:00 PM				10/17/13
11/12/13			6-9 PM				10/31/13
11/26/13		No Meeting					
12/10/13		Tentative - Human Services Overview	6-7 PM	NO	Chambers	Karen Rahn Randall Roberts	11/29/13
12/10/13		Chautauqua - Governing and Management Options	7-9 PM	NO	Chambers	Paul Fetherston	11/29/13
12/24/13		No Meeting					

March 15, 2013 Special Meeting for Board Appointments 8 AM	Est. Time	CAO to Prep. Ord?	Power Point	Timing Issues/Comments	Contact
None					
CONSENT:					
None					
PUBLIC HEARINGS:					
None					
None					
MATTERS FROM CITY MANAGER:					
Board and Commission Appointments	1 Hr.	No	No		Alisa Lewis
MATTERS FROM CITY ATTORNEY:					
None					
MATTERS FROM MAYOR AND MEMBERS:					
None					
CALL-UPS:					
March 19, 2013 Preliminary: 3/6 :: Final 3/13	Est. Time	CAO to Prep. Ord?	Power Point	Timing Issues/Comments	Contact
Stats of Children Presentation	30 Min.				
CONSENT:					
Forest Glen GID Expansion					Chris Hagelin
3rd Reading demolition ordinance for historic preservation		Yes			James Hewat
Consideration of a motion to accept the February 12 Comprehensive Community Housing Strategy Study Session Summary					Eric Ameigh/Melinda Melton
1st reading 2156 Tamarack Unilateral Annexation and Initial Zoning		Yes			Jessica Vaughn/Melinda Melton
First Reading of Inclusionary Housing Rental Policy Ordinance Revisions					Melinda Melton/Eric Ameigh
1st Reading for a deed of vacation for two surface roadway easements at the Pearl Parkway and Burlington Northern Santa Fe (BNSF) railroad Crossing		Yes			Chandler Van Schaak and Melinda Melton
PUBLIC HEARINGS:					
Civic Area Options and Criteria for Evaluation		No	15 Min	Civic Area planning meetings	Lesli Ellis
Landmark Alteration Certificate for 401 Pine Description: Review of the Landmark Board's conditional approval to construct a 14'x24' outdoor pool in the back yard at 401 Pine Street in the Mapleton Hill Historic District, per Section 9-11-18 of the Boulder Revised Code (HIS2012-00272)	45 Min	No	10 Min	Call-Up, must be reviewed by March 23	James Hewat
MATTERS FROM CITY MANAGER:					
Update Legislative Agenda	1 Hour	No			Carl Castillo
Update on Proposed Building and Energy Code Changes	1 Hr.	No	Yes	None	David Thacker
MATTERS FROM CITY ATTORNEY:					
None					
MATTERS FROM MAYOR AND MEMBERS:					
CALL-UPS:					

April 2, 2013 Preliminary: 3/20 :: Final 3/27	Est. time	CAO to Prepare Ord.?	Power Point	Timing Issues/ Comments	Contact
Science Tuesday					
Consent					
2012 Multi Hazard Mitigation Plan (MHMP)		Yes	No	Adoption in 2013	Kurt Bauer
2nd Reading for a deed of vacation for two surface roadway easements at the		yes			Chandler Van Schaak and Melinda Melton
2nd Reading of Recreational marijuana		Yes	No	Placeholder Only	Kathy Haddock
Public Hearing					
Second Reading of Inclusionary Housing Rental Policy Ordinance Revisions	1 hour	Yes	15 Min.		Eric Ameigh/Melinda Melton
Public Hearing on Burke Park - Thunderbird Lake	1 Hr.	No	Yes	Prior to May 1 due to potential water budget impact	Jeff Dillon
MATTERS FROM CITY MANAGER:					
MATTERS FROM CITY ATTORNEY:					
MATTERS FROM MAYOR AND MEMBERS:					
CALL-UPS:					
April 16, 2013 Preliminary: 4/3 :: Final 4/10	Est. time	CAO to Prepare Ord.?	Power Point	Timing Issues/ Comments	Contact
CONSENT:					
Disposal of open space land through land exchanges and conveyance of easements associated with Chapman Drive and the Red Lion Bridge		No			Jim Schmidt/Cecil Fenio
1st Reading 2012 Building/Energy Codes		Yes			David Thacker
PUBLIC HEARINGS:					
Boulder's Energy Future	5 Hours		15 min	Related to project work plan	Heather Bailey
MATTERS FROM CITY MANAGER:					
None Per Paul					
MATTERS FROM CITY ATTORNEY:					
None Per Paul					
MATTERS FROM MAYOR AND MEMBERS:					
CALL-UPS:					

May 7, 2013 Preliminary: 4/24 :: Final 5/01	Est. time	CAO to Prepare Ord.?	Power Point	Timing Issues/ Comments	Contact
Consent					
1st Reading of Animal Control Ordinance		yes			Janee Boswell
2nd reading 2156 Tamarack Unilateral Annexation and Initial Zoning		Yes			Jessica Vaughn/Melinda Melton
First Reading: Discrimination Revisions to BRC 1981, Title 12 Human Rights					Carmen Atilano
Public Hearing					
2nd Reading 2012 Building/Energy Codes	1 Hour	Yes	15 Min.		David Thacker
Consideration of Options for a Transportation Maintenance Fee	1 hour		10 min.	Possible ballot language in June	Randall Rutsch
MATTERS FROM CITY MANAGER:					
Allocations for Educational Excise Tax	20 Min.	No	No	City Council Workplan Goal 2nd Quarter	Karen Rahn
MATTERS FROM CITY ATTORNEY:					
MATTERS FROM MAYOR AND MEMBERS:					
CALL-UPS:					
May 21, 2013 Preliminary: 5/8 :: Final 5/15	Est. time	CAO to Prepare Ord.?	Power Point	Timing Issues/ Comments	Contact
CONSENT:					
First reading of the Critical Facilities Ordinance				none	Christie Coleman
PUBLIC HEARINGS:					
Second Reading: Discrimination Revisions to BRC 1981, Title 12 Human Rights	1 hour		10 min.		Carmen Atilano
MATTERS FROM CITY MANAGER:					
MATTERS FROM CITY ATTORNEY:					
MATTERS FROM MAYOR AND MEMBERS:					
CALL-UPS:					

June 4, 2013 Preliminary: 5/22 :: Final 5/29	Est. time	CAO to Prepare Ord.?	Power Point	Timing Issues/ Comments	Contact
Consent					
1st Reading Critical Facilities and Lodging Facilities Ordinance		Yes			Angie Reese/Christie Coleman
Public Hearing					
2nd Reading Animal Control Ordinance	30 mins.	Yes	10 mins.		Janee Boswell
Civic Area Options and Criteria for Evaluation	1 Hr.	No	Yes	Necessary in the sequence of Civic Area planning meetings	Lesli Ellis
MATTERS FROM CITY MANAGER:					
MATTERS FROM CITY ATTORNEY:					
MATTERS FROM MAYOR AND MEMBERS:					
CALL-UPS:					
June 18, 2013 Preliminary: 6/5 :: Final 6/12	Est. time	CAO to Prepare Ord.?	Power Point	Timing Issues/ Comments	Contact
CONSENT:					
Human Services Overview Study Session Summary					Randall Roberts
PUBLIC HEARINGS:					
2nd Reading of the Critical Facilities Ordinance	45 Minutes	No	10 Mins.		Christie Coleman
MATTERS FROM CITY MANAGER:					
MATTERS FROM CITY ATTORNEY:					
MATTERS FROM MAYOR AND MEMBERS:					
CALL-UPS:					

City Council Goals – 2012

Top Priorities:

1. Boulder's Energy Future

The top priority for the City in 2012 is the development of a framework for planning the energy future for the city of Boulder. This framework will focus on the idea of localization, the overarching goal of which is:

To ensure that Boulder residents, businesses and institutions have access to energy that is increasingly clean, reliable and competitively priced.

2. Climate Action Plan

Outline the next generation of climate action efforts in Boulder

Consider extension of CAP tax

3. Affordable Housing

Receive report of the Task force created in 2010 to evaluate goals and the approach to affordable housing and Based on Council review and discussion of these recommendations, develop an action plan to improve the availability of affordable housing in the city

Consider policies regarding inclusionary housing for rental units

4. Civic Center Master Plan

Study and develop a master plan for the area between 15th and 9th Streets, with a focus on Farmer's Market and area between Broadway and 15th Street.

Next Tier Priorities:

1. University Hill Revitalization

Continue work of Ownership Group to develop comprehensive revitalization strategy

Investigate formation of a general improvement district, including the commercial area and part of the residential area to control trash and other problems

Change boundaries of BMS land use to coincide with UHGID through BVCP process

Support private development and investment in Hill area

Partner with CU to consider opportunities for properties in the Hill area

Provide an opportunity to explore big ideas

2. Homelessness

Participate in Ten Year Plan to Address Homelessness

Balance long term and short term approaches to address needs

Invest new resources in Housing First model

Work with partners, such as BOHO, to address approaches to immediate needs

3. Boulder Junction Implementation

Work with RTD and selected developer of site to maximize mixed use urban center

Invest in planned infrastructure

Achieve goals of plan while ensuring flexibility in working with developers

Prioritize city actions to facilitate private investment

Focus additional planning work on reconsidering use for Pollard site

**City Council
2012 Work Plan by Council Goal**

TOP PRIORITIES

GOAL: Boulder's Energy Future			
2012 – 3rd Quarter	2012 – 4th Quarter	2013 – 1st Quarter	2013 – 2nd Quarter
<ul style="list-style-type: none"> ▪ Boulder's Energy Future – ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables and July 24 study session 	<ul style="list-style-type: none"> ▪ Boulder's Energy Future – ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables and Oct. 23 study session 	<ul style="list-style-type: none"> ▪ Boulder's Energy Future – ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables and study session (TBD) 	<ul style="list-style-type: none"> ▪ Boulder's Energy Future – ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables and study session (TBD)

GOAL: Climate Action Plan			
2012 – 3rd Quarter	2012 – 4th Quarter	2013 – 1st Quarter	2013 – 2nd Quarter
<ul style="list-style-type: none"> ▪ Climate Action Framework – draft five-year goals and annual targets; integration with master plans; and development of tracking and reporting tools with updates and council feedback at roundtables and July 24 study session ▪ CAP Tax – consideration of ballot language (August) ▪ Electric/ Hybrid vehicles (IP) 	<ul style="list-style-type: none"> ▪ Climate Action Framework – draft five-year goals and annual targets; integration with master plans; and development of tracking and reporting tools with updates and council feedback at roundtables and Oct. 23 study session ▪ CAP Tax – potential voter consideration in November; finalize 2013 work plan based on ballot outcome ▪ CEES – stakeholder engagement; Phase 2 options and update at Oct. 23 study session ▪ Solar Energy code changes ▪ Energy Conservation and Efficiency Program for Existing Commercial Buildings - study 	<ul style="list-style-type: none"> ▪ CEES – ongoing work on Phase 2 ordinance options; direction on preferred option from Council (TBD) ▪ Climate Action Framework: tracking and reporting tools; launch of 2013 program priorities; updates at roundtables and study session (TBD) 	<ul style="list-style-type: none"> ▪ CEES – potential ordinance adoption for Phase 2 (benchmarking and disclosure) (date TBD) ▪ Climate Action Framework: tracking and reporting tools; delivery of 2013 program priorities; updates to council at roundtables and study session (date TBD) ▪ Electric/ Hybrid vehicles – project closeout

	session <ul style="list-style-type: none"> ▪ Energy Performance Contract – Phase 3 ▪ Green Building and Green Points Program amendments; 2012 ICC Building, Fire, Wildland-Urban Interface, Energy Codes ▪ Wind generation code changes 		
--	--	--	--

GOAL: Affordable Housing

2012 – 3rd Quarter	2012 – 4th Quarter	2013 – 1st Quarter	2013 – 2nd Quarter
<ul style="list-style-type: none"> ▪ Inclusionary Housing: development of off-site criteria ▪ Analysis of TOD Fund 	<ul style="list-style-type: none"> ▪ Inclusionary Housing: options for integration of affordable housing units ▪ Inclusionary Housing: Rental policy options 	<ul style="list-style-type: none"> ▪ Mobile Homes Parks – legislative agenda ▪ Inclusionary Housing Rental Policy Ordinance depending on Council direction 	<ul style="list-style-type: none"> ▪ Inclusionary Housing Regulations Update depending on Council direction

GOAL: Civic Center Master Plan

2012 – 3rd Quarter	2012 – 4th Quarter	2013 – 1st Quarter	2013 – 2nd Quarter
<ul style="list-style-type: none"> ▪ Feedback on city space study, flood issues and ideas competition criteria (July 31 study session) ▪ Community generates ideals for civic center vision and guiding principles 	<ul style="list-style-type: none"> ▪ Council adopts guiding principles ▪ Community generates preliminary concepts; ideas competition for local and national teams 	<ul style="list-style-type: none"> ▪ Council provides feedback on initial options (January 20) ▪ Board and community input ▪ Council adopts preferred option(s) and strategies (March) 	<ul style="list-style-type: none"> ▪ Draft plan development and community input ▪ Council study session on draft plan ▪ Municipal Space Study Final Report

NEXT TIER PRIORITIES

GOAL: University Hill Revitalization

2012 – 3rd Quarter	2012 – 4th Quarter	2013 – 1st Quarter	2013 – 2nd Quarter
<ul style="list-style-type: none"> University Hill strategy - update Hill Residential Service District (IP) 	<ul style="list-style-type: none"> University Hill strategy - update Hill Residential Service District – check in on final proposal 	<ul style="list-style-type: none"> 2013 action priorities confirmed by Council at January retreat 	<ul style="list-style-type: none"> Hill Residential Service District – 1st reading of petition Action on other priorities (TBD)

GOAL: Addressing Homelessness

2012 – 3rd Quarter	2012 – 4th Quarter	2013 – 1st Quarter	2013 – 2nd Quarter
<ul style="list-style-type: none"> 10-year Plan update (IP) Action Plan to address homeless issues (Service provider plan to develop coordinated outreach and case management in Boulder) Housing First – 1175 Lee Hill Road: update on management plan and MOU 	<ul style="list-style-type: none"> Direction from Council priorities on homeless issues (from Homeless issues study session) for scoping for workplan Homelessness Issues Study Session 	<ul style="list-style-type: none"> Work plan check in and priority – Council retreat 	<ul style="list-style-type: none"> Update on Homeless Action Plan (service providers)

GOAL: Boulder Junction Implementation

2012 – 3rd Quarter	2012 – 4th Quarter	2013 – 1st Quarter	2013 – 2nd Quarter
<ul style="list-style-type: none"> Update on TVAP implementation; check-in on city owned site vision and options; and discussion of policy issues related to key public improvements, as needed (July 31 Study Session) TDM/ Parking Access GID budget - consideration 	<ul style="list-style-type: none"> Update on potential policy issues related to key public improvements 	<ul style="list-style-type: none"> TDM District Implementation Update (IP) Update on potential policy issues related to key public improvements and city owned site (as needed) 	<ul style="list-style-type: none"> Update on potential policy issues related to key public improvements and city owned site (as needed)

OTHER

GOAL: Other City Goals and Work Plan Items

2012 – 3rd Quarter	2012 – 4th Quarter	2013 – 1st Quarter	2013 – 2nd Quarter
<ul style="list-style-type: none"> ▪ Acquisition plan update (OSMP) ▪ Annexation and site review <ul style="list-style-type: none"> ○ Boulder Jewish Commons (Arapahoe and Cherryvale) ○ Hogan Pancost ▪ Barker Reservoir Boating ▪ Capital Investment Strategy Round I - implementation update ▪ Chautauqua Stewardship Framework: draft principles for CCA lease ▪ Civic Use Task Force <ul style="list-style-type: none"> ○ Update on recommendations and next steps ▪ City Property leases (IP) ▪ Code changes <ul style="list-style-type: none"> ○ Alcohol/ Land Use ○ Congregate care ○ Community gardens ▪ CU East Campus coordination – update ▪ Disposable Bag Reduction ordinance ▪ Economic Sustainability Strategy – phase one study on primary employers (study session) ▪ Education Excise Tax – process for allocation of remaining funds ▪ Evolution of Access and Parking Management Strategies (DUHMD/PS) <ul style="list-style-type: none"> ○ IP ○ Formation of staff and community work groups 	<ul style="list-style-type: none"> ▪ Bike parking ordinance updates ▪ Capital Investment Strategy Round I - implementation update ▪ Carter Lake Pipeline – CEAP ▪ Chautauqua Parking Data Collection and Assessment – check in ▪ Code changes <ul style="list-style-type: none"> ○ Pearl Street Mall - permits and leases ▪ Disposable Bag ordinance ▪ Education Excise Tax – process for allocation of remaining funds ▪ Floodplain Management including Boulder Creek Mapping, South Boulder Creek Mitigation, and Critical Facilities ▪ NPP commuter permit - sunset ▪ OSMP natural resources – overarching policy issues ▪ Pearl Parkway Multi-use Path 30th Street to Foothills CEAP Call up ▪ Public works design and construction standards - update ▪ Randolph Center Condominium Declaration ▪ Smoking Ban on Pearl Street Mall (Pilot) – ordinance ▪ Sustainability indicators ▪ Sustainable streets and centers: typology framework and 	<ul style="list-style-type: none"> ▪ 28th Street Multi-use Path and Bikeable Shoulders Iris to Yarmouth CEAP Call up ▪ Capital Investment Strategy Round I – implementation update ▪ Contractor licensing ▪ Cultural Master Plan ▪ DUHMD/ PS assessment update (IP) ▪ Economic Sustainable Strategy – policy recommendations (study session) ▪ Floodplain Management including Boulder Creek Mapping, South Boulder Creek Mitigation, and Critical Facilities ▪ Smoking Ban on Pearl Street Mall (Pilot) – implementation ▪ State of the Court Presentation ▪ Take out container waste reduction ordinance ▪ Transportation Funding (SS) ▪ TMP Update – additional direction ▪ US36 Bikeway Maintenance – Enhancements IGA (tentative based on if extra community investments are desired) ▪ Zero Waste Master Plan Update 	<ul style="list-style-type: none"> ▪ Baseline Underpass East of Broadway CEAP – Call up ▪ Floodplain Management including Boulder Creek Mapping, South Boulder Creek Mitigation, and Critical Facilities ▪ OSMP natural resources – overarching policy issues <ul style="list-style-type: none"> ○ Temporal Regulations ○ Penalties for violations ○ Multi-modal access and parking opportunities ○ Analysis of trail network and distribution of activities ▪ Parks and Recreation Master Plan ▪ Police Department Master Plan ▪ Smoking Ban on Pearl Street Mall (Pilot) – analysis and recommendation ▪ TMP Update – additional direction ▪ Water supply status

<ul style="list-style-type: none"> ○ Disseminate RFQ's for Project Consultant ▪ Highway 93 over/underpass IGA ▪ IBM Connector Trail IGA ▪ Mall Events update (IP) ▪ Municipal Building Improvements (update) ▪ OSMP trail around city (IP) ▪ Smoking Ban on Pearl Street Mall (Pilot) – public process ▪ Stormwater Ordinance Update ▪ Stormwater Management IGA – Keep it Clean Partnership ▪ Transportation Funding (IP) ▪ TMP update – assessment, check in/ refinement policy focus areas ▪ US36 Bikeway Maintenance IGA ▪ Valmont Butte Site Management and Remediation (IP) ▪ Water supply status 	<ul style="list-style-type: none"> direction on next steps ▪ Takeout container waste reduction – policy direction ▪ Transportation Funding (direction) ▪ Urban wildlife – prairie dog policy and ordinance revisions ▪ Valmont Butte Site ▪ Zero Waste Master Plan Update Management and Remediation (IP) 		
---	---	--	--

KEY

BMEA	Boulder Municipal Employees Association
BVCP	Boulder Valley Comprehensive Plan
CAGID	Central Area General Improvement District
CEAP	Community and Environmental Assessment Process
CAP	Climate Action Plan
CU	University of Colorado
DUHMD/PS	Downtown and University Hill Management District/ Parking Services (City Division)
GID	General Improvement District
ICC	International Code Council
IGA	Intergovernmental Agreement
IP	Information Packet
MOU	Memorandum of Understanding
NPP	Neighborhood Parking Permit Program
OSMP	Open Space/Mountain Parks Department
RFQ	Request for Qualifications
RH	Residential Housing
TDM	Transportation Demand Management
TMP	Transportation Master Plan

**CITY COUNCIL
ACCOMPLISHMENTS – 1ST AND 2ND QUARTER 2012**

TOP PRIORITIES:

GOAL: BOULDER’S ENERGY FUTURE

**FIRST AND SECOND QUARTER
2012 ACCOMPLISHMENTS**

- Hiring of Executive Director for Energy Strategy and Electric Utility Development
- Retention of FERC and acquisition legal counsel
- Initial work in developing appraisal of distribution system and preparing legal strategy
- Initial work on Phase 1 of a new Energy Action Plan, including demand side programs and renewables modeling
- Active participation at the PUC to advance Boulder’s energy goals and protect community interests
- Boulder Canyon Hydroelectric Facility Agreement: City Council authorized the dedication of easements to Public Service Company of Colorado to facilitate upgrades to the city’s Boulder Canyon Hydroelectric Facility.

GOAL: CLIMATE ACTION PLAN

**FIRST AND SECOND QUARTER
2012 ACCOMPLISHMENTS**

- Third party review and evaluation of CAP tax funded programs to date
- Preparation of November 2012 CAP tax ballot options for Council consideration
- Initial steps to develop and refine a new Climate Action Framework consisting a renewed climate action commitment, five-year goals, annual targets, integration with appropriate master plans and city operations, and new reporting tools
- Initial work to identify priorities for the next generation of energy efficiency programs (as part of Phase 1 of the Energy Action Plan)
- Development of Commercial Energy Efficiency Strategy approach and stakeholder process (to be integrated as part of Phase 1 of the Energy Action Plan)
- Continued delivery of CAP programs and services to achieve annual targets (EnergySmart, Ten for Change, SmartRegs compliance, etc.)
- Energy Efficiency Upgrades in City Facilities - (a) Energy Performance Contract (EPC) – Phase III; (b) Lease purchase financing for energy conservation measures; and (c) Energy improvements, lease amendments, and payments. - Implemented the third phase of Energy Performance Contracts (EPC) for city facilities, including the installation of another 347 kilowatts of solar photovoltaic

at the Municipal Service Center buildings, Fleet Services, OSMP Annex and The Dairy Center for the Arts.

- Energy Efficiency Upgrades in City Facilities – Employee Education and Outreach Project (Information Packet) - A staff team participated in three workshops with McKinstry, the city’s Energy Performance Contractor, to help develop a new PowerED energy education and outreach program for employees. Program development will continue with other city staff focus groups through the end of December 2012.

GOAL: AFFORDABLE HOUSING

FIRST AND SECOND QUARTER 2012 ACCOMPLISHMENTS

- Added 12 new permanently affordable homes to inventory
- Affordable housing agreement for Gunbarrel Town Center
- Affordable Housing Program Work plan - Council Consideration and Direction; new initiatives identified
- Analysis completed of affordable housing distribution
- Completed funding of major renovations to improve housing quality and economic sustainability of three BHP properties
- Development of voluntary affordable housing agreement for Depot Square project
- Inclusionary Housing Rental Policies – Council Consideration and Direction
- Thistle Community Housing completing fire sprinklers in all of its properties

GOAL: CIVIC CENTER MASTER PLAN

FIRST AND SECOND QUARTER 2012 ACCOMPLISHMENTS

- Development of interdepartmental project team and approach; project goals and objectives; and public engagement strategy (reviewed at joint Planning Board / City Council study session in April)
- Detailed design of community visioning process and articulation of key project assumptions (reviewed with Council at June 12 study session)
- Preparation of baseline materials and launch of public engagement in July.
- The Municipal Space Study contract was awarded to StudioTerra on March 23. FAM and the consultants are interviewing city departments and conducting research on industry trends and standards for office space. Preliminary results of the space study, as it relates to the Civic Center Master Plan, will be presented at the July 31 study session.

NEXT TIER PRIORITIES:

GOAL: UNIVERSITY HILL REVITALIZATION

**FIRST AND SECOND QUARTER
2012 ACCOMPLISHMENTS**

- Zoning change: Business Main Street (BMS) boundary to coincide with the University Hill General Improvement District boundary; rezoning of UHGID lots to BMS zoning (approved by Planning Board; scheduled for Council consideration in August)
- Continued work of the Hill Ownership Group to develop a comprehensive revitalization strategy.
- In coordination with a volunteer, stakeholder committee completed a proposal for a Residential Service District which includes: boundaries, scope of services, proposed budget, proposed governance structure, agreements for financial participation by tax-exempt sororities and fraternities, and a timeline for a 2013 Petition and Election process.
- Landmarking of Flatirons Theater building (and associated building renovation)
- 955 Broadway (Acacia Fraternity site redevelopment)

GOAL: ADDRESSING HOMELESSNESS

**FIRST AND SECOND QUARTER
2012 ACCOMPLISHMENTS**

- Council Consideration and Direction on: 1175 Lee Hill Project; added 31 permanent housing units for chronically homeless, disabled adults
- Continued Homeless Service Provider Coordination Project to develop action plans for case management, outreach and service coordination
- Continued implementation of Ten year Plan to Address Homelessness

GOAL: BOULDER JUNCTION IMPLEMENTATION

**FIRST AND SECOND QUARTER
2012 ACCOMPLISHMENTS**

- Developed and implemented a funding strategy to finance the acquisition of 100 parking spaces by the Boulder Junction Access District – Parking (BJAD-P) in the Depot Square parking garage including a Lease/Purchase Agreement between BJAD-P and the developer, and a City of Boulder/BJAD-P Cooperation Agreement
- Developed a strategy to manage parking in the parking structure through technology and a management agreement among the

users. The arrangement provides for parking spaces to be paid, unbundled, and shared in a manner to meet the needs of the various users of Depot Square (hotel, residential, RTD) and general parking in BJAD-P spaces. Agreement was reached with RTD regarding short term and long term parking management strategies given their current legislative mandate.

- Finalized the ownership structure for five different owners to coordinate management of their units and common areas through a Condominium Declaration for the Depot Square project
- Finalized a renovation agreement and lease consistent with guiding principles with Pedersen Development Corporation for the Depot
- Finalized legal agreements for joint public/private development of Depot Square (RTD facility, shared parking, affordable housing, hotel, public space and rehabilitation of historic depot
- Approved changes to the Transportation Network Plan in support of the Transit Village Area Plan (TVAP)
- Revised Street Design for Pearl Parkway and Connections Plan Revisions (adopted by Council January 17)
- Consistent with the TVAP connections plan and along with private redevelopment, a number of capital improvements are underway, including the installation of underground power lines, preparations for installing a traffic signal at Junction Place and Pearl Parkway, and portions of the Pearl Parkway multi-way boulevard
- Consistent with the TVAP connections plan, design work continues for the bridge over Goose Creek and the multi-use path on the north side of Pearl Parkway between 30th Street and Foothills Parkway
- Received a Federal Hazard Elimination Program grant award through the Colorado Department of Transportation (CDOT) that will allow installation of a traffic signal at 29th Street and Valmont Road, improving safety and implementing improvements identified in the Transit Village Area Plan (TVAP) (project will begin in 2014)
- Completion of engineering and building construction plan review for a 319 unit residential development at 3100 Pearl and the RTD Depot Square transit-oriented development

GOAL: OTHER CITY GOALS AND WORK PLAN ITEMS

FIRST AND SECOND QUARTER 2012 ACCOMPLISHMENTS

CAPITAL ITEMS

- Anemone Trails (new) – design work completed
- Arapahoe Avenue (Folsom to 30th) - Multimodal Improvements Project Completed construction on the Arapahoe Avenue multi-use path project. The remaining street resurfacing and landscaping work will be completed in 2012.
- Boulder Creek and South Boulder Creek – restoration of grassland and riparian areas continued
- Broadway (Euclid to 18th) - Transportation Improvements Project - Made progress on the Broadway (Euclid to 18th) Transportation Improvements Project. 16th Street opened the first week of May and the Broadway underpass and the four lanes on Broadway (two in each direction) are scheduled for completion by early July.
- Broke ground in January for a new multi-use path on the south side of Baseline, connecting U.S. 36 and the Bear Creek Underpass, including a pedestrian crossing for Baseline Road at Canyon Creek. Completion of the multi-use path on the west end is underway through a redevelopment project.
- Completed a new sidewalk along Gillaspie Drive, connecting Greenbriar Boulevard and Juilliard Street connecting to Fairview High School
- Completed the course bunker renovation/playability project at Flatirons Golf Course by installing 19 new sand bunkers
- Continued work at Valmont City Park, including additional construction at Valmont Bike Park; outreach and design for Valmont Dog Park; and design and construction of the interim disc golf course
- Facility ADA Compliance - An Americans with Disabilities Act (ADA) consultant completed comprehensive ADA assessments for the Park Central and Municipal buildings. Costs for the recommendations are being identified and prioritized, with other buildings planned for assessment.
- Green Bear Trail Re-route – work in progress with one section completed and opened to public
- Gregory Canyon Trailhead Site Plan – initial site plan design work began
- Homestead Trail Re-route – work in progress with one section completed and opened to public
- Library Facility Upgrades and Enhancements (New Children's Library and New Teen Space): The selection of a design firm is underway
- Linden Avenue Sidewalk Project (Safe Routes to School) - Completed a Safe Routes to School Project, providing a sidewalk on the north side of Linden Avenue between Fourth Street and Broadway.
- New Wildland Fire Facilities - Responses to the request for qualifications (RFQ) for facility designs were received on May 11. Requests for proposals (RFP) to be sent in early June
- Organic farming – agricultural contract written for 47 acres

- Replaced traffic signal incandescent lamps with sustainable, energy-saving light-emitting diode (LED) lamps
- Sanitas Stone Hut Repair – hut was reinforced and stonework repaired
- South Boulder Creek West Trailhead – Parking areas for cars and horse trailers completed and open to public; working through permit process for outhouse and kiosk installations; interpretive signs in production
- South Boulder Recreation Center - The contaminated sub floors from the gymnasium, racquetball court, and Pilates room have been removed and are expected to be replaced with new wood floors by early June 2012.
- Street repair expanded efforts – began the first of three years

OTHER SIGNIFICANT ACTIONS¹

- Boulder B-cycle station at the North Boulder Recreation Center sponsored
- Boulder Community Hospital Expansion Rezoning
- BVCP: Area II study results and potential next steps (IP to City Council in July)
- BVCP Comprehensive Rezoning (scheduled for council consideration in August)
- BVCP 2010 Major Update: planning reserve policy changes (study session discussion with Council on May 29; Council and County Commissioner dinner discussion on June 14)
- Boulder Reservoir Master Plan completed
- Boulder Valley School District Faculty and Staff Eco Pass Program Expansion - Continued partnership with the Boulder Valley School District (BVSD) to expand the BVSD faculty and staff Eco Pass program.
- Chautauqua Stewardship Framework: Draft and Next Steps
- City Website Redesign Kickoff - Kicked off redesign with Vision Internet and the City of Arvada. Gathered a list of key stakeholders and surveyed them regarding elements the new website should contain.
- Code enforcement - reallocation of resources to the Boulder Police Department was fully implemented to ensure efficient and effective service delivery
- Community and Environmental Assessment Process (CEAP) for flood mitigation and transportation improvements along Fourmile Canyon Creek, near Crest View Elementary School completed, including a City Council call-up opportunity.
- Compatible Development implementation - annual report to Council
- Congregate Care code changes (pending further consideration based on Council direction)
- Constituent Relationship Management (CRM) procurement effort - Designed and implemented a staff engagement and procurement initiative to implement a new CRM application resulting in the unanimous selection of Government Outreach. Vendor contract negotiations are currently underway. This initiative is designed to significantly improve our customers' ability to request, track and ultimately receive more timely and effective services while providing staff with automated tools to better

manage these requests.

- Disposable Bag Reduction Ordinance: research and options presented to Council on May 15; work on nexus study underway
- Draft Fire-Rescue Master Plan completed and approved by Planning Board.
- Economic Sustainability Strategy: phase one study of primary employer space needs underway; presentation of results to Council scheduled for August
- Elks neighborhood park planning, outreach and design continued with construction and completion in 2013
- Family Resource Center opened at Manhattan Middle School in partnership with Boulder County Housing and Human Services
- FasTracks' Northwest Rail Plan - Approved guiding principles for developing and designing a hybrid approach to FasTracks' Northwest Rail Plan.
- Fire Master Plan – Council feedback on strategies (April 3, 2012); Planning Board recommendation for acceptance (May 17, 2012); Scheduled for Council consideration (June 19, 2012)
- Heather wood Trail Intergovernmental Agreement (IGA) - City Council authorized the signing of an intergovernmental agreement (IGA) with Boulder County related to the maintenance of a trail that crosses the Wastewater Treatment Facility property.
- Integrated Pest Management Policy Revision and Program Direction (Council provided direction on May 1)
- Landmarking of First Christian Church building (950 28th Street)
- Locomotive #30 narrow gauge historic cosmetic restoration completed
- Mesa Memorial Park design and development initiated
- Mosquito control annual report (Completed report on the IPM web site – link will be provided to council with first weekly mosquito report in June)
- Named number 3 on list of best cities for bicycling by *Bicycling Magazine*, in part due to the Valmont Bike Park and new path connections made possible by the capital improvement bond
- New Transportation Safety Ordinances - Approved ordinance changes to improve transportation safety in the city and initiated education and enforcement efforts to support the ordinance changes
- Organic turf and landscape bed program at six park locations launched
- Received a Safe Routes to School Grant to install a traffic signal at South Boulder Road and Manhattan Drive to create a safe crossing for middle school students taking transit, riding, or walking to and from school.
- RH-2 Zone District Changes (scheduled for council consideration in August)
- *Safe Streets Boulder* report published in February.
- SmartRegs - Continued the successful implementation of SmartRegs and the pilot program for rental housing licensing enforcement. The backlog of rental license compliance cases is almost entirely eliminated.
- Transportation Report on Progress, *Transportation to Sustain a Community* published in February.
- Valmont Butte – VCUP implementation commenced; excavation work began on April 4 with both the tribe-designated native cultural monitor and the city's archaeologist consultant present.

- Veterans and active duty military personnel recreation pass program developed

Key:

ADA = Americans with Disabilities Act
BHP = Boulder Housing Partners
BVSD = Boulder Valley School District
BMS = Business Main Street
CAP = Climate Action Plan
CDOT = Colorado Department of Transportation
EPC = Energy Performance Contract
EET = Education Excise Tax
FAM = Facilities and Asset Management (City Division)
FERC = Federal Energy Regulatory Commission
IGA = Inter-governmental Agreement
IP = Information Packet
OSMP = Open Space/ Mountain Parks Department
PUC = Colorado Public Utilities Commission
RFP = Request for Proposals
RFQ = Request for Qualifications
RTD = Regional Transportation District
TVAP = Transit Village Area Plan
UHGD = University Hill General Improvement District
VCUP = Colorado Voluntary Cleanup Program

This Page Intentionally Left Blank